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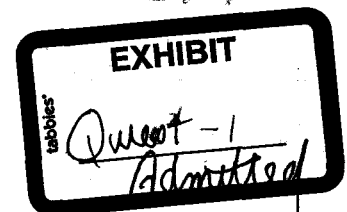
Docket #(s): T00000A-97-0238

RT-00000F-02-0271

T-01051B-02-0871

Exhibit #: Q1, Q2, AT&T1, AT&T2, A&D1,
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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

MIKE GLEASON
Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

SEP 22 2003

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IN THE MATTER QWEST CORPORATION'S
COMPLIANCE WITH SECTION 252(e) OF THE
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. RT-00000F-02-0271

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH SECTION 271 OF THE
COMMUNICATIONS ACT OF 1996

DOCKET NO. T-00000A-97-0238

ARIZONA CORPORATION COMMISSION,

Complainant,

DOCKET NO. T-01051B-02-0871

v.

QWEST CORPORATION,

Respondent.

DAVID ZIEGLER

TESTIMONY IN SUPPORT OF PROPOSED SETTLEMENT AGREEMENT

ON BEHALF OF

QWEST CORPORATION

1

2 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND CURRENT
3 POSITION.

4 A. My name is David Ziegler. I am employed by Qwest Services Corporation ("Qwest") as
5 Assistant Vice President – Arizona Public Policy. My business address is 4041 North
6 Central Avenue, Phoenix, Arizona 85012.

7

8 Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?

9 A. I am responsible for regulatory, legislative and community affairs in Arizona.

10

11 Q. PLEASE REVIEW YOUR EDUCATIONAL AND EMPLOYMENT
12 BACKGROUND.

13 A. I received a Bachelor of Science degree in Business Administration (summa cum laude)
14 from Columbia College in 1988. I have also attended numerous industry seminars on
15 economics, management, marketing and technical courses. I began my career with Qwest
16 (Mountain Bell) in 1978 in the business office. In 1980, I accepted the position of
17 Manager - Residence Operations, where I was responsible for developing methods and
18 procedures for billing and collections. In 1986, I moved to Strategy Development, where I
19 was responsible for cost of service studies and economic regulatory issues. In 1994, I
20 accepted the position of Manager – Regulatory Affairs in Colorado Regulatory where I was
21 responsible for managing regulatory issues before the Colorado Public Utilities
22 Commission. In 1997, I accepted the position of Director - Regulatory Affairs in Colorado
23 Regulatory. In 2001, I accepted the position of Regional Director – Out of Region, where I
24 was responsible for regulatory and legislative activities in a 14-state area. In 2002, I
25 accepted my current position.

26

1 Q. HAVE YOU PREVIOUSLY APPEARED BEFORE THE ARIZONA
2 CORPORATION COMMISSION OR OTHER PUBLIC UTILITY COMMISSIONS
3 AS A WITNESS IN REGULATORY PROCEEDINGS?

4 A. I have not previously appeared before the Arizona Corporation Commission (the
5 "Commission") in any formal regulatory proceeding, but I have testified before the
6 Colorado Public Utilities Commission and the Illinois Commerce Commission.
7

8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

9 A. The purpose of my testimony is to provide the Commission with an overview and
10 explanation of the proposed settlement (the "Proposed Settlement Agreement") agreed to
11 by Qwest Corporation ("Qwest") and Commission Staff, and to describe how the
12 Proposed Settlement Agreement is in the public interest. The Proposed Settlement
13 Agreement is attached as Exhibit DZ-1.
14

15 OVERVIEW OF PROPOSED SETTLEMENT AGREEMENT
16

17 Q. PLEASE DESCRIBE THE THREE DOCKETS ADDRESSED IN THE PROPOSED
18 SETTLEMENT AGREEMENT.

19 A. The Proposed Settlement Agreement resolves certain dockets currently pending before the
20 Commission, specifically Docket No. RT-00000F-02-0271 (the "252(e) Unfiled
21 Agreements Docket"); Docket No. T-00000A-97-0238 (the "271 Subdocket"); and
22 Docket No. T-0151B-02-0871 (the "Order to Show Cause" or "OSC"). The Commission
23 established the 252(e) Unfiled Agreements Docket to consider allegations that Qwest had
24 violated Section 252(e) of the Telecommunications Act of 1996 (the "Act") by not
25 submitting to the Commission for review and approval certain agreements reached with
26 competitive local exchange carriers ("CLECs"). Additionally, the Commission created

1 the 271 Subdocket to address allegations that settlement agreements between Qwest and
2 certain CLECs had improperly impeded the Commission's evaluation of Qwest's
3 application under Section 271 of the Act. Finally, the Commission opened the Order to
4 Show Cause as a result of allegations that Qwest failed to implement the wholesale rates
5 ordered in Decision No. 64922 within a reasonable time period, without first notifying or
6 obtaining the approval of the Commission.

7
8 **Q. PLEASE PROVIDE AN OVERVIEW OF THE PROPOSED SETTLEMENT**
9 **AGREEMENT.**

10 A. The Proposed Settlement Agreement represents a balanced approach to accommodate the
11 interests asserted by the Staff, CLECs, and RUCO in each of the three dockets that are the
12 subject of the Settlement. The Proposed Settlement Agreement also reflects substantial
13 compromise and concessions of Qwest's positions in these cases. That is, the Proposed
14 Settlement Agreement accounts for the interests of the Staff and RUCO in providing for
15 over \$11 million in payments to the State of Arizona in the form of payments to the State
16 Treasury, as well as contributions for targeted benefits of Arizona telecommunications
17 consumers. The Proposed Settlement Agreement also accedes to interests asserted by the
18 CLECs in the Section 252(e) case and grants them substantial credits for wholesale
19 services purchased under their interconnection agreements within the scope of Section
20 251(b) and (c).

21
22 On the other hand, and as discussed further below, Qwest is waiving substantial rights in
23 order to settle these cases. As an example, in the Section 252(e) case, a CLEC requesting
24 to receive the same benefits from the terms of another CLEC's interconnection agreement
25 also must assume the same related obligations provided by the other CLEC under the
26 agreement. These obligations may include assuming the same volume commitments and

1 making the same payments as Eschelon and McLeod did under their agreements. Further,
2 some of the credits provided to Eschelon were premised upon Eschelon receiving the
3 "UNE-Star" product and the use of a manual billing system. In the Proposed Settlement
4 Agreement, Qwest would not require CLECs to assume the same obligations as Eschelon
5 and McLeod to receive the credits.

6
7 Qwest anticipates that CLECs may comment that the Proposed Settlement Agreement
8 should provide credits in addition to those offered in the Settlement. In Qwest's view,
9 such comments do not account for the substantial concessions Qwest has made in the
10 Proposed Settlement Agreement, because CLECs may not be able to demonstrate that they
11 satisfy the criteria necessary to obtain any of the credits that Qwest already is offering
12 under the Proposed Settlement Agreement. In other words, the credits offered under the
13 Proposed Settlement Agreement should not be considered as the minimum that Qwest
14 would have to provide as a result of this case; rather, the credits contained in the Proposed
15 Settlement Agreement represent very large concessions by Qwest. I will also explain in
16 this testimony why Qwest offers some credits as part of the Proposed Settlement
17 Agreement but will not offer others that CLECs have sought in the Section 252(e) case.

18
19 The Proposed Settlement Agreement also requires Qwest to continue its current
20 procedures and processes instituted prior to the Settlement to ensure compliance with its
21 Section 252 obligations and timely implementation of cost docket rates. Qwest also
22 commits to submit to the Commission settlement agreements in any Commission dockets
23 of general application. The Proposed Settlement Agreement also provides for regulatory
24 monitoring of Qwest's compliance mechanisms under Section 252(e) and of Qwest's
25 wholesale cost docket implementation. These compliance provisions reflect Qwest's
26 strong commitment to its regulatory obligations and regard for regulatory processes.

1 Further, if the Proposed Settlement Agreement is approved, Qwest would dismiss the cost
2 docket appeal before the federal district court, which also could result in significant
3 benefits for CLECs.

4 RECITALS

5 **Q. WHAT IS THE IMPORTANCE OF THE RECITALS IN THE PROPOSED**
6 **SETTLEMENT AGREEMENT?**

7 A. Similar to many agreements, the Recitals in the Proposed Settlement Agreement provide
8 the context in which the parties negotiated and agreed upon a resolution of the cases.
9 Thus, the Recitals first summarize the three dockets at issue. These Recitals go further,
10 however, to provide Qwest's assurances, without admitting any wrongdoing in these
11 cases, of its intention and policy to conduct its business in Arizona with integrity and with
12 regard and respect for regulatory processes. The Recitals also pledge the Company's
13 commitment "to comply with and to address the Commission's stated concerns that Qwest
14 is to comply with the filing requirements of Section 252(e) of the Telecommunications
15 Act, implement cost docket decisions in a timely manner, and apprise the Commission of
16 any settlement with a telecommunications carrier that would result in the carrier not
17 participating in any generic docket of industry-wide general concern before the
18 Commission."

19 CASH PAYMENTS AND VOLUNTARY CONTRIBUTIONS

20
21 **Q. PLEASE OUTLINE THE PAYMENTS THAT QWEST WILL MAKE AS PART**
22 **OF THE PROPOSED SETTLEMENT AGREEMENT.**

23 A. Qwest will make a total of \$11.197 million in payments to the State of Arizona and its
24 citizens. The \$11.197 million has been allocated such that \$5,197,000 will be paid to the
25 State Treasury within 30 days from the effective date of the Commission's decision
26

1 approving the Proposed Settlement Agreement,¹ and \$6,000,000 will be contributed
2 toward economic development, educational, and infrastructure investment projects for the
3 welfare of Arizona consumers and telecommunications.

4
5 **Q. PLEASE EXPLAIN THE APPORTIONMENT OF THE \$5,197,000 CASH**
6 **PAYMENT TO THE STATE TREASURY.**

7 A. The Proposed Settlement Agreement apportions the \$5,197,000 payment to each docket as
8 follows: (1) \$5,000,000 for the 252(e) Unfiled Agreements Docket and the 271
9 Subdocket, (2) an additional \$47,000.00 for a portion of the 252(e) Unfiled Agreements
10 Docket, and (3) \$150,000 for the Order to Show Cause case.

11
12 The \$5,000,000 payment addresses the Staff's allegations regarding the principal
13 agreements at issue in the Section 252(e) case, particularly the Eschelon and McLeod
14 agreements. The \$5 million also is attributable to the Staff's case in the 271 Subdocket
15 addressing certain settlement provisions in which CLECs agreed to withdraw from
16 proceedings before the Commission, including the 271 Docket. The \$47,000 payment
17 addresses other agreements the Staff alleges should have been filed, where the Staff did
18 not view Qwest's actions as ^{intentional} ~~international~~ or willful. This is the penalty recommended by
19 Staff with respect to these agreements. See Prefiled Testimony of Marta Kalleberg,
20 Executive Summary (February 28, 2003). Finally, the Staff and Qwest stipulated to a
21 \$150,000 payment to account for the Staff's allegations in the Order to Show Cause case.
22
23
24

25 ¹ The Proposed Agreement defines the "effective date" as the date by which the
26 Commission's decision approving the Agreement becomes final under A.R.S. § 40-253, including
the expiration of time periods for the filing and consideration of any application for rehearing.

1 Q. WHAT IS THE PURPOSE OF APPORTIONING \$6,000,000 TO SPECIFIC
2 TELECOMMUNICATIONS PROJECTS?

3 A. Of the \$11.197 million, \$6,000,000 will be contributed to any of three categories:
4 (1) Section 501(c)(3) organizations or other State-funded programs involved in education
5 and/or economic development; (2) educational programs designed to promote a better
6 understanding of telecommunications issues by Arizona consumers; and (3) infrastructure
7 investment in unserved and/or underserved areas in Arizona. Such infrastructure
8 investment may include the development of further route diversity for homeland security
9 and 911 services, as well as investments that further the general welfare or safety of
10 consumers, or investments in advanced services.

11
12 The allocation of monies to these categories reflects an intent that monies be utilized for
13 projects targeted to promote specific interests of Arizona ratepayers.

14
15 Q. HOW WILL THE ECONOMIC DEVELOPMENT, EDUCATIONAL, OR
16 INFRASTRUCTURE INVESTMENT PROJECTS BE SELECTED?

17 A. Generally, Qwest and the Staff will collaborate to propose specific programs and
18 infrastructure investments, which will be subject to the ultimate decision of the
19 Commission. The process for selecting specific projects is outlined in Section 2, Sub-
20 paragraph 3 on pages 4-6 of the Proposed Settlement Agreement. First, the parties would
21 request the Commission to determine the percentage allocation among the three categories
22 of contributions: education, economic development, and infrastructure investment. The
23 percentage for any category can be from 0% to 100%. Qwest will subsequently provide a
24 list of projects for each category within 30 days of the effective date of the Commission's
25 approval of the Proposed Settlement Agreement. The Staff will have another 30 days to
26 provide its proposed projects. Further, the Commission may designate specific projects.

1 See Proposed Settlement Agreement at page 4. Within 180 days of the approval of the
2 Proposed Settlement Agreement, Qwest and Staff are to agree upon the projects to be
3 funded. If the Staff and Qwest cannot agree, then the matter will be brought to the
4 Commission for a determination.
5

6 **Q. WHAT TYPES OF PROJECTS ARE PERMITTED WITHIN THE CATEGORY**
7 **OF "INFRASTRUCTURE INVESTMENTS?"**

8 A. This category includes investments in "Unserved" or "Underserved" areas in Arizona,
9 investments to further route diversity for homeland security and 911 services, investments
10 that promote the general welfare or safety of consumers, or investments in advanced
11 services. The term "Unserved Area" is defined to include areas outside of Qwest's current
12 exchange boundaries not currently served or not adequately served by any wireline service
13 provider, and other areas as determined or approved by the Commission. "Underserved
14 Area" means any area within Qwest's current exchange boundaries but outside the Base
15 Rate Area, which does not have Qwest wireline telephone facilities available.
16

17 This category is intended is to be quite broad in its application and reflects a variety of
18 interests expressed by the Commissioners, the Staff and RUCO, concerning the provision
19 of services to remote or inadequately served areas, homeland security, and broadband
20 services.
21

22 **Q. WHAT IS THE SCHEDULE FOR INITIATING APPROVED PROJECTS?**

23 A. The Proposed Settlement Agreement requires Qwest to make contributions into projects
24 that do not require construction or development of new facilities or programs within 60
25 days of the approval of such projects. In other words, if the contribution is simply a cash
26 payment, Qwest will do so within 60 days. If the project requires new construction or

1 development, then Qwest will initiate such investments within 180 days of approval,
2 barring circumstances outside of Qwest's control, such as right-of-way or permit issues.
3

4 **Q. DOES THE PROPOSED SETTLEMENT AGREEMENT PROVIDE FOR**
5 **ADJUSTMENT OF THE ALLOCATIONS INTO THE CONTRIBUTION**
6 **CATEGORIES?**

7 A. Yes. If Qwest has yet to expend funds or has not contractually committed funds to an
8 approved project, the Commission or the Director of Utilities may revise the allocations
9 on a project-by-project basis.
10

11 **Q. IS THERE A POSSIBILITY THAT THE AMOUNT OF THE CONTRIBUTIONS**
12 **TO EDUCATIONAL, ECONOMIC DEVELOPMENT, OR INVESTMENT**
13 **PROJECTS COULD BE MORE THAN \$6,000,000?**

14 A. Yes. The Proposed Settlement Agreement sets minimum amounts of credits that Qwest
15 must grant to CLECs under Sections 3, 4, and 5. If Qwest does not extend credits up to
16 the minimum amounts, then Qwest will contribute the difference to the educational,
17 economic, or infrastructure investment projects as selected under the same procedure
18 outlined above. These additional contributions are subject to withholding if a CLEC does
19 not execute a release and files claims within a year of the effective date of approval of the
20 Proposed Settlement Agreement. This withholding allows Qwest to retain funds to satisfy
21 CLEC claims asserted outside of the Proposed Settlement Agreement. See Proposed
22 Settlement Agreement.
23
24
25
26

CLEC CREDITS

Q. PLEASE OUTLINE THE CREDITS OFFERED TO CLECS AS PART OF THE PROPOSED SETTLEMENT AGREEMENT.

A. As detailed below, Qwest will issue three types of one-time credits to eligible CLECs: (1) credits as measured by 10% of a CLEC's purchase of Section 251(b) and (c) services under the Act through their interconnection agreement with Qwest or through Qwest's SGAT over an 18-month period from January 1, 2001 through June 30, 2002 (See Section 3 of the Proposed Settlement Agreement); (2) credits as measured by \$2 per UNE-P or unbundled loop from July 1, 2001 through February 28, 2002, offset by actual receipts of terminating Qwest intraLATA toll traffic (See Section 4 of the Proposed Settlement Agreement); and (3) credits as measured by \$13 or \$16 per UNE-P line per month from November 2000 through February 2002, offset by a CLEC's billings to interexchange carriers for originating and terminating switched access (See Section 5 of the Proposed Settlement). Under the Proposed Settlement Agreement, the CLEC's are required to execute a release of claims arising from the 252(e) Docket and 271 Subdocket in order to obtain the credits.

Q. STARTING WITH THE 10% CREDIT UNDER SECTION 3, WHAT INTEREST DOES THAT CREDIT ADDRESS?

A. The credits offered under Section 3 address the allegations made in the Section 252(e) case that Eschelon and/or McLeod received payments from Qwest equal to 10% of their purchases over a period of time.

Q. DOES THE 10% CREDIT REPRESENT A COMPROMISE OF THE RIGHTS ASSERTED IN THE SECTION 252(E) CASE?

A. Yes, if the Proposed Settlement Agreement is approved and CLECs request the credits

1 offered under Section 3, Qwest will have compromised substantial rights and defenses that
2 it asserted in this case. As more fully explained in Qwest's evidence and legal briefing in
3 the 252(e) docket, any CLEC requesting the benefits of an interconnection provision must
4 also assume all related obligations. Thus, assuming for the purposes of this Proposed
5 Settlement only that the McLeod and Eschelon agreement constituted interconnection
6 agreements subject to opt in rights, requesting CLECs must assume the same obligations
7 as Eschelon and McLeod did in the subject agreements. These include making the same
8 payments that Eschelon and McLeod did, as well as assuming the same volume
9 obligations. By not requiring CLECs to make the same payments as Eschelon and
10 McLeod and assume other related terms, Qwest has substantially compromised its
11 position in this case. As stated earlier in this testimony, this is the reason that the credits
12 issued as part of the Proposed Settlement Agreement should not be viewed as the
13 minimum liabilities for which Qwest may be responsible in this case. Rather, this credit
14 represents a very large concession on the part of Qwest.

15
16 **Q. PLEASE EXPLAIN THE 18-MONTH TIME PERIOD FOR THE 10% DISCOUNT**
17 **CREDIT UNDER SECTION 3.**

18 **A.** The 18-month period also represents a significant compromise and concession by Qwest.
19 The Eschelon agreement at issue had a duration of 15 and ½ months, from November 15,
20 2000 through February 28, 2002. The written McLeod agreements offered as evidence in
21 the 252(e) case have a starting date for the purchases of services as January 1, 2001.
22 Payments to McLeod stopped after the third quarter of 2001, and Qwest and McLeod
23 entered into a settlement agreement in September of 2002 (tendered to the Commission
24 for its information soon after execution) providing that without any admissions as to the
25 terms of the Qwest/McLeod contractual arrangements, all such arrangements terminated
26 as of June 30, 2002. Thus, the 18-month period is longer than Eschelon or McLeod

1 arguably received any of the alleged payments at issue in this case.

2
3 **Q. WHAT IS THE REASON FOR APPLYING THE 10% CREDIT TO PURCHASES**
4 **OF SECTION 251(b) AND (c) SERVICES?**

5 A. This testimony is not intended to offer any legal conclusions or analysis concerning
6 Qwest's positions in the cases at issue. Such matters are not within my area of expertise,
7 and are best reserved for briefing. However, this testimony is intended to explain Qwest's
8 settlement reasoning, namely that the Section 252(e) filing requirement extends only to
9 the interconnection services delineated under Section 251(b) and (c) of the Act, and that
10 there are no Section 252(e) filing obligations with regard to non-Section 251 services.
11 Further, it is Qwest's view that CLEC opt in rights extend only to those services that are
12 within an "interconnection agreement," which again extends to only Section 251 services.
13 Thus, CLECs have no opt in rights to non-Section 251 services.

14
15 Further, as stated above, Qwest is already making large concessions by offering credits
16 based upon Section 251 services without also requiring CLECs to assume the same
17 obligations assumed by Eschelon and McLeod in their agreements. It is a reasonable
18 settlement to draw the lines for credits at Section 251 services.

19
20 **Q. PLEASE EXPLAIN THE BASIS FOR THE \$2 ACCESS LINE CREDITS IN**
21 **SECTION 4 OF THE PROPOSED SETTLEMENT AGREEMENT.**

22 A. This credit is premised upon allegations regarding the July 3, 2003 letter agreement
23 between Eschelon and Qwest. A paragraph on page 2 of that letter addresses billings by
24 Eschelon for its termination of Qwest's intraLATA toll to customers served by an
25 Eschelon switch. Similar to that letter agreement, Qwest will provide a credit of \$2 per
26 month per UNE-P or unbundled loop purchased by a CLEC from July 1, 2001 through

1 February 28, 2002, which is the approximate date of the agreement going forward until
2 the letter agreement's termination, which was executed on March 1, 2002.
3

4 **Q. WHAT IS THE BASIS OF THE OFFSETS FROM THE \$2 CREDIT?**

5 A. The basis for the credit is to compensate up to \$2 for revenues to be paid by Qwest for
6 Eschelon's termination of intraLATA toll. Thus, if a CLEC has received payments from
7 Qwest for the termination of intraLATA toll, then the CLEC has been compensated up to
8 that extent, and the \$2 credits should be offset by the amount of such collections from
9 Qwest. The Proposed Settlement Agreement in Section 4 (A) – (D) establishes a
10 notification and discovery process for the calculation of the credits and offsets.
11

12 **Q. DOES THE \$2 CREDIT REPRESENT A COMPROMISE AND CONCESSION BY**
13 **QWEST FOR THE PURPOSES OF THE PROPOSED SETTLEMENT**
14 **AGREEMENT?**

15 A. Yes. Again, as an issue of law, subject to dispute and further litigation on appeal, Qwest
16 maintained that compensation for termination of intraLATA toll is not a Section 251(b) or
17 (c) service, and is outside of the types of provisions that would require filing under
18 Section 252(e) and outside of CLEC opt in rights under Section 252(i). In order to
19 achieve a reasonable settlement of the parties' positions in these cases, however, Qwest
20 offered this credit, representing another major concession by Qwest in favor of the
21 CLECs.
22

23 **Q. PLEASE EXPLAIN THE \$13 AND \$16 UNE-P CREDITS OFFERED TO CLECS**
24 **UNDER SECTION 5 OF THE PROPOSED SETTLEMENT AGREEMENT.**

25 A. Again, without offering a legal opinion, these credits account for the allegations regarding
26 provisions in two Eschelon agreements, one dated November 15, 2000, and the other

1 July 3, 2003 (which is the same letter agreement discussed above regarding the \$2
2 credits). The background of the provisions at issue here is that Eschelon was receiving the
3 type of UNE-P product known as "UNE-Star," or as applied to Eschelon, "UNE-E."
4 UNE-Star also involved the provisioning to Eschelon of manual daily usage files from
5 which Eschelon determined its billings to interexchange carriers of switched access
6 charges for originating and terminating interexchange calls. Eschelon claimed that the
7 manual daily usage files were not accurate. The November 15, 2000 agreement resolves
8 this dispute by providing Eschelon a \$13 credit per UNE-Star line per month in any month
9 in which Qwest does not provide accurate daily usage information until a mechanized
10 process is in place. The July 3, 2001 agreement increased the credit to \$16 per month per
11 UNE-Star line. The credits under Section 5 of the Proposed Settlement Agreement
12 attempt to simulate the credits provided to Eschelon.
13

14 **Q. WHAT IS THE DURATION OF THE \$13 CREDIT AND OF THE \$16 CREDIT?**

15 A. The \$13 credit, offset by billings to IXC's for switched access, would apply from
16 November 2000 through June of 2001, and the \$16 credit, subject to offset, would apply
17 from July 2001 through February 2002. These time frames parallel the dates of the two
18 agreements between Qwest and Eschelon.
19

20 **Q. WHAT IS THE REASON FOR APPLYING OFFSETS TO THE \$13 AND \$16**
21 **CREDITS?**

22 A. As discussed above, the credits account for switched access billing. And, as stated in the
23 July 3 letter agreement on the second page, the credit was actually implemented such that
24 Eschelon's switched access billings to IXC's for the UNE-E lines served as an offset to the
25 credits. Thus, CLEC's requesting this credit must offset the billings to their IXC's. If a
26 CLEC was not billing IXC's for switched access over their UNE-P lines, then the CLEC

1 should not receive any credit to reflect lost billings. The procedures for notification and
2 discovery of information necessary to calculate the credits and the offsets are set forth in
3 Section 5(A)-(D).
4

5 **Q. DO THE \$13 AND \$16 CREDITS REFLECT CONCESSIONS BY QWEST IN THE**
6 **PROPOSED SETTLEMENT AGREEMENT?**

7 A. Yes. It is Qwest's position that a CLEC requesting opt-in rights must be in a similar
8 position and assume the same obligations as the CLEC did under the subject agreement.
9 The Eschelon November 15, 2000 shows that a commitment by Eschelon to purchase \$15
10 million of telecommunications services was related to the payment of the \$13 and \$16
11 credits. Further, the credits were to end upon the conversion to a mechanized process for
12 the daily usage records. Other CLECs already had in place a mechanized process for
13 daily usage files. Qwest is not asserting the \$15 million volume commitment or the
14 manual records conditions as necessary criteria to receive this credit under the Proposed
15 Settlement Agreement.
16

17 **FUTURE COMPLIANCE**

18 **Q. DOES THE PROPOSED AGREEMENT ESTABLISH ANY INDEPENDENT**
19 **MEANS FOR MONITORING QWEST'S COMPLIANCE WITH ITS SECTION**
20 **252 OBLIGATIONS AND THE IMPLEMENTATION OF NEW WHOLESALE**
21 **COST DOCKET RATES?**

22 A. Yes. Qwest also will pay for an independent, third-party monitor, selected by the Director
23 of the Utilities Division, who will conduct an annual review of Qwest's Wholesale
24 Agreement Review Committee. Section 8 at 13-14. Qwest also commits to continue its
25 web-based training program for new and existing employees in certain organizations for a
26 three-year period. Section 9 at 14. Additionally, Qwest must hire an independent,

1 third-party consultant, selected by the Director of Utilities, to conduct assessments of and
2 recommend improvements to Qwest's wholesale rate implementation process. Section 12
3 at 15-16. Both the consultant and the monitor shall be retained for a maximum period of
4 three years. Additionally, Qwest will continue its internal cost docket governance team
5 for three years. Section 14 at 16-17.

6
7 **Q. PLEASE EXPLAIN QWEST'S COMPLIANCE PROCESSES TO IMPLEMENT**
8 **NEW WHOLESALE COST DOCKET RATES.**

9 A. Under Section 14 of the Proposed Settlement Agreement, Qwest and Staff must meet one
10 year from the effective date of a Commission decision approving the Proposed Settlement
11 Agreement to discuss the status of Qwest's wholesale implementation in Arizona, current
12 industry expectations regarding such implementation, and Qwest's business practices
13 concerning both wholesale rate implementation and the negotiation of interconnection
14 agreements.

15
16 In its OSC post-hearing brief filed on July 15, 2003, Qwest committed to certain measures
17 ensuring that delays in wholesale rate implementation were not repeated. As of that filing,
18 Qwest had already:

- 19 • Engaged an outside consultant to provide recommendations for
20 automation of many processes associated with cost docket
21 implementation;
- 22 • Implemented a mechanized solution to shorten the time it took to
23 map individual CLEC contracts in the 1st Quarter 2003;
- 24 • Designated a Program Management Office to oversee the
25 implementation process, ensuring that implementation schedules
26 were adhered to and opportunities for process improvement would

1 be explored and acted upon;

- 2 • Established a Cost Docket Governance Team comprised of
- 3 executive level personnel from the organizations within the
- 4 Company with primary involvement and responsibility for cost
- 5 docket implementation; and
- 6 • Modified its communications process to require increased
- 7 correspondence with Staff and all wholesale customers at critical
- 8 process points, including:
 - 9 1. Immediately after the issuance of a final Commission order;
 - 10 2. Immediately after rate sheets are updated; and
 - 11 3. Immediately prior to the introduction of new
 - 12 Commission-approved rates.

13
14 **Q. DOES THE PROPOSED SETTLEMENT AGREEMENT PROVIDE FOR TIME**
15 **PERIODS WITHIN WHICH QWEST WILL IMPLEMENT NEW COST DOCKET**
16 **RATES?**

17 **A.** Yes. The Proposed Settlement Agreement also establishes a process for establishing final
18 and specific wholesale rates, and a specific 60-day time frame in which Qwest has agreed
19 to implement such rates on a going-forward basis. Any request for additional time
20 requires that good cause be shown and is subject to Commission approval. See Section 15
21 at 17-18.

22
23 **Q. PLEASE EXPLAIN QWEST'S COMMITMENT TO PROVIDE TO THE**
24 **COMMISSION SETTLEMENT AGREEMENTS THAT INCLUDE**
25 **WITHDRAWAL BY A CLEC FROM A GENERIC DOCKET.**

26 **A.** The primary issue raised in the 271 Subdocket was the propriety of CLEC settlement

1 agreements in which the CLEC also agreed to withdraw from a pending generic docket
2 such as the 271 proceeding. It is Qwest's understanding that the concern expressed by the
3 Commission and the Staff is that the Commission should be aware of any agreement
4 resulting in a CLEC no longer participating or providing input into a docket of industry-
5 wide importance.

6
7 Qwest agrees in the Proposed Settlement Agreement to file with the Commission any
8 future settlement agreements reached in Commission dockets of general application
9 within 10 days of execution. This includes the filing of a written statement by Qwest each
10 year attesting to the fact that all such agreements have either been filed or do not exist.
11 This measure will prevent any future questions concerning the propriety of Qwest
12 settlements in such dockets and will foster continued competition among all
13 telecommunication carriers.

14 15 **COST DOCKET APPEAL**

16 **Q. DOES THE PROPOSED SETTLEMENT AGREEMENT OBLIGATE QWEST TO**
17 **DISMISS THE COST DOCKET APPEAL?**

18 **A.** Yes. If the Proposed Settlement Agreement is approved, Qwest will file a motion
19 requesting the federal district court to dismiss with prejudice the appeal of the
20 Commission's cost docket order issued on June 12, 2002, Decision No. 64922.

21
22 **Q. DOES THE DISMISSAL OF THE COST DOCKET APPEAL PROVIDE**
23 **BENEFITS TO THE OTHER PARTIES IN THE CASE?**

24 **A.** The parties to the appeal will avoid the expense of litigating the appeal. And, dismissal
25 will provide certainty of future rates. But in addition, by withdrawing its appeal, Qwest
26 will forego its ability to request the federal court to review the cost docket decision. A

1 successful appeal by Qwest may have resulted in higher rates for CLEC purchases of
2 unbundled network elements in the future.

4 CONCLUSION

5 Q. IS THE PROPOSED SETTLEMENT AGREEMENT IN THE PUBLIC 6 INTEREST?

7 A. Yes. The Proposed Settlement Agreement represents a reasonable compromise between
8 the positions of the parties and provides significant advantages for CLECs, consumers,
9 and the State of Arizona. The Proposed Settlement Agreement imposes significant
10 financial obligations on Qwest totaling approximately \$21,000,000.00. This amount
11 clearly is substantial, and the monies and credits will be allocated to serve each of the
12 relevant interests asserted in these cases.

13
14 Specifically, the voluntary contributions to be made by Qwest -- under the direction of the
15 Commission -- further create an opportunity for the Commission to address pressing
16 issues affecting all carriers and customers throughout the State, including "unserved" and
17 "underserved" territories.

18
19 Additionally, eligible CLECs will receive substantial credits quickly upon Commission
20 approval of the Proposed Settlement Agreement. Formulas for calculating these credits
21 have been established to reduce, if not eliminate, disputes about amounts owed.
22 Eligibility for CLECs is simple and only requires a CLEC to demonstrate that it was
23 certificated and operating in Arizona during a defined period of time. CLECs do not, for
24 example, have to meet several of the terms and conditions imposed by the subject
25 agreements upon Eschelon and McLeod in the dockets at issue.
26

1 The Proposed Settlement Agreement sets clear deadlines and creates processes for the
2 implementation of wholesale rates. Mechanisms for the Commission's monitoring of
3 wholesale cost docket implementation and for Section 252 agreement review also are
4 established.

5
6 In sum, the Proposed Settlement Agreement imposes very significant and costly
7 obligations upon Qwest, and at the same time resolves contentious pending issues and
8 allows all parties to focus on the future and improved development of competitive
9 telecommunications services in Arizona.

10
11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 **A. Yes.**

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, CHAIRMAN

JIM IRVIN

WILLIAM A. MUNDELL

JEFF HATCH-MILLER

MIKE GLEASON

IN THE MATTER OF)
QWEST CORPORATION'S)
COMPLIANCE WITH SECTION 252(e) OF)
THE TELECOMMUNICATIONS ACT OF 1996)

DOCKET NO. RT-00000F-02-0271

IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S)
COMPLIANCE WITH SECTION 271 OF)
THE COMMUNICATIONS ACT OF 1996)

DOCKET NO T-00000A-97-0238

ARIZONA CORPORATION COMMISSION)
Complainant,)
V)
QWEST CORPORATION,)
Respondent.)

DOCKET NO. T-01051B-02-0871

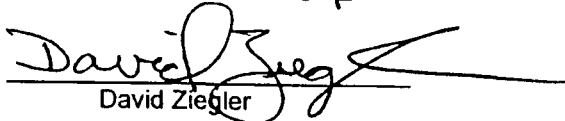
STATE OF ARIZONA)
COUNTY OF MARICOPA)

AFFIDAVIT OF
DAVID ZIEGLER

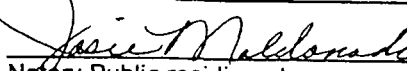
David Ziegler, of lawful age being first duly sworn, deposes and states:

1. My name is David Ziegler. I am Assistant Vice President – Arizona Public Policy. I have caused to be filed written testimony in support of the proposed Settlement Agreement on behalf of Qwest Corporation in Docket No. RT-00000F-02-0271/T-00000A-97-0238/T-01051B-02-0871.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.


David Ziegler

SUBSCRIBED AND SWORN to before me this 14th day of August, 2003


Notary Public residing at
Phoenix, Arizona

My Commission Expires: 9/18/04

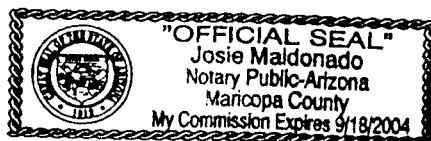


EXHIBIT DZ-1

SETTLEMENT AGREEMENT

Qwest Corporation ("Qwest" or "the Company") and the Arizona Corporation Commission Staff ("Staff"), ("the Parties") hereby agree to a settlement (the "Settlement Agreement" or "this Agreement") of certain Dockets currently pending before the Arizona Corporation Commission ("Commission"), specifically Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act); Docket No. T-00000A-97-0238 (Subdocket) (the 271 Subdocket which addressed allegations that Qwest interfered with the 271 regulatory process); and Docket No. T-01051B-02-0871 (the Order to Show Cause ("OSC") for not implementing Commission approved wholesale rates on a timely basis). These Dockets shall be collectively referred to in this Agreement as the "Litigation." The following terms and conditions are intended to resolve all of the issues raised in or associated with the Litigation.

RECITALS

WHEREAS, the Parties desire to adopt this Agreement subject to Commission approval;

WHEREAS, by adopting this Agreement, the Parties intend to settle and terminate the Litigation in a manner that is fair and reasonable;

WHEREAS, the 252(e) Unfiled Agreements Docket involved allegations that Qwest violated Section 252(e) of the Telecommunications Act by failing to file for Commission review and approval certain agreements with Competitive Local Exchange Carriers ("CLECs") operating in the state of Arizona;

WHEREAS, the 271 Subdocket involved allegations that Qwest improperly entered into settlement agreements with CLECs that resulted in the nonparticipation by such CLECs in the Commission docket evaluating Qwest's application under Section 271 of the Telecommunications Act, all without the Commission's knowledge; and that Qwest thereby interfered with the 271 regulatory process;

WHEREAS, the Order to Show Cause involved allegations that Qwest failed to implement the wholesale rate changes ordered in Decision No. 64922 within a reasonable period of time, that Qwest failed to notify the Commission of rate implementation delay, that Qwest failed to obtain Commission approval of the delay in implementation, and that Qwest's wholesale rate change system is unreasonably slow and inefficient;

WHEREAS, Qwest acknowledges, without admitting any wrongdoing, the concerns raised regarding the allegations which are the subject of the Litigation and expresses its regret over the events leading to the Litigation and, without admitting wrongdoing, Qwest states its intention to comply fully in the future with all written laws, rules, regulations and orders governing Qwest's conduct;

WHEREAS, Qwest avows that it is the policy and commitment of the Company to conduct all of its business affairs in the state of Arizona with integrity, honesty, in conformance with Arizona laws and regulations and with respect for the regulatory processes of the Commission.

WHEREAS, Qwest also acknowledges, without admitting any wrongdoing, concerns raised by the parties, including the Staff, regarding allegations that its behavior was designed to intentionally deceive and misrepresent certain facts before the Commission. Further, without admitting any wrongdoing, Qwest avows that the Company and its official representatives will not engage in fraudulent, deceptive or intentionally unlawful conduct in any matters pending before the Arizona Corporation Commission.

WHEREAS, Qwest acknowledges that Commission approval of this Settlement Agreement shall constitute a Commission Decision directing that Qwest implement the provisions of this Settlement Agreement which are intended to assure future compliance with respect to the filing requirements of Section 252(e) of the Telecommunications Act, to assure timely implementation of future cost dockets and to assure that Qwest files with the Commission any settlement agreement with a telecommunications carrier that would result in the carrier not participating in any generic docket of industry-wide general concern pending before the Commission and that violations of those provisions may be punished by contempt after notice and a hearing as provided by A.R.S. Section 40-424;

WHEREAS, as detailed in this Agreement, Qwest shall apply monies and issue credits to resolve the events leading to the Litigation, as well as implement procedures and accede to independent monitoring, thereby demonstrating the commitment of corporate management to comply with and to address the Commission's stated concerns that Qwest is to comply with the filing requirements of Section 252(e) of the Telecommunications Act, implement cost docket decisions in a timely manner, and apprise the Commission of any settlement with a telecommunications carrier that would result in the carrier not participating in any generic docket of industry-wide general concern before the Commission;

WHEREAS, while Qwest denies any wrongdoing, the parties agree that the terms and conditions of this Agreement, including but not limited to, the Cash Payment, Voluntary Contributions and Minimum Settlement Amount, are fair, reasonable and in the public interest;

WHEREAS, in consideration thereof, the Parties agree as follows:

TERMS AND CONDITIONS

1. CASH PAYMENT.

Qwest agrees to pay an Aggregate Cash Payment Amount of \$5,197,000.00. The Parties have agreed that the Aggregate Cash Payment Amount shall be attributable to each portion of the Litigation as follows:

1. \$5,000,000.00 for the Dockets addressing Qwest's compliance with Section 252(e) and Qwest's alleged interference with the 271 regulatory process;
2. \$47,000.00 for the Docket addressing Qwest's compliance with Section 252(e);
3. \$150,000 for the Docket dealing with Qwest's implementation of the new wholesale rates.

Qwest agrees to pay the Aggregate Cash Payment Amount to the State Treasurer within 30 days of the Effective Date of the Commission's Decision approving this Agreement.

2. VOLUNTARY CONTRIBUTIONS.

Qwest agrees to make Voluntary Contributions in an amount of \$6,000,000.00, or more as detailed below, in the following areas:

1. Section 501(c)(3) organizations or other State-funded programs involved in the areas of education and/or economic development;
2. Educational programs designed to promote greater understanding of telecommunications issues by Arizona consumers;
3. Infrastructure Investment, including investments in Unserved and Underserved areas in the State of Arizona. Any party to this Agreement may also propose other projects, which may include by way of illustration but are not limited to the following:

investments to further route diversity for homeland security and 911 services, investments that promote the general welfare or safety of consumers, or investments in advanced services. All parties shall have the right to argue in support of or opposition to any of the proposed projects before the Commission, if agreement cannot be reached. This provision is not intended to prohibit the Commission from designating specific projects.

Qwest's initial Voluntary Contribution shall be in the amount of \$6,000,000.00. This amount shall be subject to increase to the extent that the Minimum Settlement Amounts specified in Paragraphs 3 through 5 below are not reached, subject to Paragraph 6 below. Further, Qwest agrees that all such investments shall be in addition to any investments, construction or work already planned by Qwest.

Parties will request that the Commission determine the percentage allocation (e.g. from 0 to 100) of the Voluntary Contributions to be made for each of the three investment categories (i.e., education, economic development, and Infrastructure Investment) forthwith or the Commission may designate such responsibility to its Director of Utilities. The parties agree that, in order to have the process of allocations of voluntary contributions work as efficiently as possible, they will request that the Commission provide guidance on the allocation of funds among the categories prior to submission of the project lists by the parties. The Commission or Director of Utilities shall have the discretion to revise such allocations on a project by project basis to the extent Qwest has not already spent the allocated funds or has not contractually committed the funds to a project previously approved by the Commission. Additional amounts added through non-expenditure by Qwest of any portion of the Minimum Settlement Amounts in Paragraphs 3 through 5 below shall be handled in a like manner.

Qwest shall be required to provide a proposed list of projects in each investment category within 30 days of the Effective Date of the Commission's Decision approving the Settlement Agreement, or in the case of additional projects, its notification to the Commission that the Minimum Settlement Amounts have not been met. Any other signatory to this agreement may

provide a list of projects for any category within 60 days of the Effective Date, for Commission consideration and approval or in the case of additional projects, within 60 days of Qwest's notification to the Commission that the Minimum Settlement Amounts have not been met. Qwest shall also be required to provide Staff with such additional information on those projects as well as other projects identified by Staff, to allow Staff to make its determinations in an informed manner. Such information shall include data which allows Staff to establish that the projects are in addition to any construction and work already planned by Qwest.

Within each investment category, approved projects shall be determined by the mutual written agreement of the Director of the Commission's Utilities Division and Qwest's Arizona President within 180 days of the Effective Date of the Commission's Decision approving this Agreement. Allocation to additional projects as a result of Qwest's not meeting the Minimum Settlement Amounts specified in Paragraphs 3 through 5, shall be approved within 180 days of Qwest's notification to the Commission that the Minimum Settlement Amounts have not been met. In the event that the Director of the Commission's Utilities Division and Qwest's Arizona President cannot agree, the decision on such project shall be escalated to the Commission for decision. If the projects do not require any additional facilities, construction or development of new programs, Qwest shall make its investments in the approved projects within 60 days of their approval by the Director of the Commission's Utilities Division and Qwest's Arizona President, or approval by the Commission if agreement cannot be reached.

If an approved project requires Qwest to develop additional facilities or development of new programs, construction of such facilities and implementation of such programs shall commence no later than 180 days of the mutual agreement of the Director of the Commission's Utilities Division and Qwest's Arizona President, barring any circumstances outside of Qwest's control, including but not limited to, right-of-way ("ROW"), permits, environmental studies, archaeological studies, contract and/or lease negotiations or force majeure events, which shall

extend the above-referenced construction date. Any such extensions of time shall first be approved by the Commission's Director of Utilities.

For purposes of the Infrastructure Investment category, "Unserved Area" shall be defined as any area outside of Qwest's current exchange boundaries not currently served or not adequately served by any wireline telephone service provider and other areas as determined or approved by the Commission. "Underserved Area" shall be defined as any area within Qwest's current exchange boundaries but outside the Base Rate Area which does not have Qwest wireline telephone facilities available.

For purposes of "Underserved Areas", Qwest will be required to invest an incremental amount over and above what it otherwise would have invested (the base amount). Qwest agrees to provide Staff with the information required to verify that any of the proposed projects represent an incremental amount over and above what it would have invested otherwise. Qwest's current line extension and construction tariff would continue to apply to the development of infrastructure for the purpose of expending the Voluntary Contributions under this agreement.

3. DISCOUNT CREDITS

Qwest further agrees to issue a one-time credit to Eligible CLECs, equal to 10 percent of the total amount of services purchased under 47 U.S.C. Sections 251 (b) and (c) (as defined by the FCC for the relevant time period) through their interconnection agreements with Qwest or through Qwest's Statement of Generally Available Terms and Conditions ("SGAT") during the time period from January 1, 2001, through June 30, 2002. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between January 1, 2001 through June 30, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue such Discount Credits to all Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving the Settlement Agreement. To obtain the Discount Credit, an Eligible CLEC shall be required to execute a

release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The amount of the aggregate Discount Credits shall neither exceed \$8,910,000.00 nor be less than \$8,100,000.00. If the aggregate Discount Credits provided to Eligible CLECs are less than \$8,100,000.00 (Minimum Settlement Amount for purposes of this Paragraph 3), Qwest shall contribute a sum equal to the difference (i.e., \$8,100,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate Discount Credits are greater than \$8,910,000.00, Qwest shall provide the Discount Credits in the aggregate amount of \$8,910,000.00 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$8,910,000.00 equal to the percentage of that CLEC's claim for Discount Credits to the total claims of all CLECs for Discount Credits).

4. ACCESS LINE CREDITS.

Qwest further agrees to issue one-time credits to Eligible CLECs at the rate of \$2.00 per month for each UNE-P line or unbundled loop purchased by the CLEC from Qwest between July 1, 2001, through February 28, 2002, less amounts billed and collected by each Eligible CLEC from Qwest for terminating intraLATA toll on a monthly basis during that same time period. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between July 1, 2001 through February 28, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue these one-time Access Line Credits to all Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving the Settlement Agreement. To obtain the Access Line Credits, an Eligible CLEC shall be required to execute a release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the

agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The total amount of the Access Line Credits shall neither exceed \$660,000.00 nor be less than \$600,000.00. If the aggregate Access Line Credits provided to Eligible CLECs are less than \$600,000.00 (Minimum Settlement Amount for purposes of this Paragraph 4), Qwest shall contribute a sum equal to the difference (i.e., \$600,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate Access Line Credits issued exceed \$660,000.00, Qwest shall provide Access Line Credits in the aggregate amount of \$660,000.000 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$660,000.00 equal to the percentage of that CLEC's claim for Access Line Credits to the total claims of all CLECs for Access Line Credits).

The following procedures shall apply in determining the amount of Access Line Credits to be provided by Qwest to CLECs:

- A. Within 30 days of the Effective Date of the Commission's Decision Approving the Settlement Agreement, Qwest will inform each CLEC operating in Arizona that purchased UNE-P or unbundled loops from Qwest from July 2001 through February 2002, that it may be eligible to receive a per UNE-P or per unbundled loop credit for terminating IntraLATA switched access, to be offset by collections from Qwest for the CLEC's terminating switched access. Qwest's notice will include the procedures for CLECs to respond as specified below.
- B. Within 60 days of being informed by Qwest of its possible eligibility, each CLEC will submit to Qwest information and documentation supporting the following:
 - i. The average number of UNE-P lines and unbundled loops leased by the CLEC in service per month from July 2001 through February 2002.

- ii. The amounts the CLEC actually collected from Qwest for terminating intraLATA switched access for the UNE-P lines or unbundled loops in service, for each month from July 2001 through February 2002.
- C. Within 60 days of the date Qwest receives the information specified in Subparagraph B from the CLEC, Qwest shall inform the CLEC of the amount of the credit it is due (the \$2 per line per month amounts less the offset calculated based upon the above information).
 - i. Within 30 days of the date Qwest informs the CLEC of the amount of the credit it is due, Qwest shall credit to each CLEC that has executed a release of any and all claims against Qwest the amount that the CLEC is actually entitled to receive.
- D. If a CLEC fails to reasonably comply by not providing Qwest with any of the information necessary to determine the appropriate amount of credit, the CLEC will not be entitled to receive credits under this Paragraph. Notwithstanding the above, if the information is in the possession of Qwest, Qwest shall not require the CLEC to provide it again in order to receive the credit. If the information is not available to either Qwest or the CLEC, the CLEC will receive the amount that Qwest actually paid Eschelon each month, which is \$0.96 per line per month. Any disputes arising from this subpart shall be submitted to the Commission Staff for resolution.

5. UNE-P CREDITS.

Qwest further agrees to provide one-time credits to Eligible CLECs against future purchases for each month Qwest did not provide accurate daily usage information. These UNE-P credits shall be made at the rate of \$13 per month for each UNE-P line purchased by CLECs through their interconnection agreements with Qwest or Qwest's SGAT from November 1, 2000,

through June 30, 2001 and \$16 per month for each UNE-P line purchased by CLECs through their interconnection agreements with Qwest or through Qwest's SGAT from July 1, 2001, through February 28, 2002, less the amounts actually billed by these CLECs to interexchange carriers for switched access on an aggregate basis for such UNE-P lines during these monthly periods divided by the average number of UNE-P lines in service for that month. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between November 1, 2000 through February 28, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue the UNE-P Credits to Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving this Settlement Agreement. To obtain the UNE-P Credits, an Eligible CLEC shall be required to execute a release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The total amount of the UNE-P Credits shall neither exceed \$550,000.00 nor be less than \$500,000.00. If the aggregate UNE-P Credits issued to Eligible CLECs are less than \$500,000.00 (Minimum Settlement Amount for purposes of this Paragraph 5), Qwest shall contribute a sum equal to the difference (i.e., \$500,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate UNE-P credit exceeds \$550,000.00, Qwest shall provide UNE-P Credits in the aggregate amount of \$550,000.00 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$550,000.00 equal to the percentage of that CLEC's claim for UNE-P Credits to the total claims of all CLECs for UNE-P Credits).

The following procedures shall apply to determining the amount of UNE-P Credits to be provided by Qwest to the CLECs:

- A. Within 30 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest will inform each CLEC operating in Arizona that leased UNE-P from Qwest from November 2000 through February 2002, that it may be eligible to receive a per UNE-P Credit for each month Qwest did not provide accurate daily usage information, to be offset by actual billings to interexchange carriers ("IXCs") for switched access. Qwest's notice will include the procedures for CLECs to respond as specified below.
- B. Within 60 days of being informed by Qwest of its possible eligibility, each CLEC will submit to Qwest information and documentation supporting the following:
- i. The months from November of 2000 to February, 2002 that the CLEC believes it did not receive accurate daily usage information from Qwest.
 - ii. The reasons that the CLEC believes that the daily usage information was inaccurate.
 - iii. The average number of UNE-P lines leased by the CLEC in service for each such month that it believes it did not receive accurate daily usage information.
 - iv. The aggregate amount the CLEC actually billed interexchange carriers for switched access originated and terminated through such UNE-P lines for each month in which the CLEC believes Qwest's daily usage information was inaccurate.
- C. Within 60 days of the date Qwest receives the information specified in Subparagraph B from the CLEC, Qwest shall inform the CLEC of the amount of the credit it is due (the \$13 or \$16 per line per month amounts less the offset calculated based upon the above information) or the reasons that Qwest believes that the DUF files that it provided to the CLEC were accurate.

- i. Within 30 days of the date Qwest informs the CLEC of the amount of the credit it is due, Qwest shall credit to each CLEC that has executed a release of any and all claims against Qwest the amount that the CLEC is actually entitled to receive after adjusting for any offsets attributable to the CLEC; or
 - ii. If Qwest has informed the CLECs that it believes that the DUF files were accurate, the CLEC shall have 30 days to respond to Qwest. Qwest shall then have the burden of proving that the DUF files were accurate.
- D. If a CLEC fails to reasonably comply by not providing Qwest with any of the information necessary to determine the appropriate amount of credit, the CLEC will not be entitled to receive credits under this Paragraph. Notwithstanding the above, if the information is in the possession of Qwest, Qwest shall not require the CLEC to provide it again in order to receive the credit. Any disputes arising from this subpart shall be submitted to the Commission Staff for resolution.

6. ADDITIONAL VOLUNTARY CONTRIBUTIONS.

Qwest agrees that if the credits issued under Paragraphs 3 through 5 above, are less than the respective Minimum Settlement Amounts required under these same Paragraphs of this Agreement, Qwest shall make an additional voluntary contribution in the manner provided under Paragraphs 2 and 3 through 5 above and this Paragraph 6 in an amount equal to the remaining respective Minimum Settlement Amounts for the Discount, Access Line and UNE-P credits not issued to satisfy the terms of this Agreement. Qwest may deduct amounts attributable to Eligible CLECs that do not execute a release of any and all claims against Qwest from the amount of Discount Credits, Access Line Credits, and/or UNE-P Credits owed under this Agreement, for a period of one year from the Effective Date of the Commission Decision approving the Settlement Agreement. At the expiration of one year from the Effective Date of the Commission Decision

approving this Settlement Agreement, Qwest shall make additional Voluntary Contributions in the manner provided under Paragraphs 2 and 3 through 5 above in amounts equal to the remaining respective Minimum Settlement Amounts for the Discount, Access Line and UNE-P Credits not issued to satisfy the terms of this Agreement. Qwest may also deduct any amounts due under Paragraphs 3 through 5 of this Agreement for any individual CLEC which brings a claim within one year from the Effective Date of the Commission Decision approving the Settlement Agreement against Qwest arising out of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket). Qwest shall make the additional contributions required under this paragraph no later than 90 days from the submission of its final written report required in Paragraph 7 following.

7. REPORT ON CREDITS.

Within 240 days from the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest shall submit a written report to Staff demonstrating that it has issued the Discount Credits, Access Line Credits, and UNE-P Credits in the manner provided in Paragraphs 3 through 5 above. Qwest shall provide any additional reasonable information as may be requested by the Staff in determining that such credits were issued in a proper and timely manner. CLEC specific information shall be submitted as confidential information. If not all CLECs have executed a release of any and all claims against Qwest, Qwest shall submit a final written report 60 days after the one-year period specified in paragraph 6 above has expired.

8. RETENTION OF INDEPENDENT MONITOR.

Within 90 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest agrees to retain and thereafter pay for an independent third-party monitor, selected by the Director of the Commission's Utilities Division with input from Qwest, to conduct an annual review of the Qwest Wholesale Agreement Review Committee for a period

of three years from the Effective Date of the Commission's Decision approving the Settlement Agreement. The scope of the annual independent review shall be determined by the Staff with input from Qwest and interested parties. The Monitor must be able to demonstrate that he or she can offer an independent opinion, that no conflicts of interest will result from his or her selection and that he or she has not testified in a docket in Arizona involving Qwest in the past three years. Qwest may terminate its retention of the Monitor prior to the end of the three year period only upon the written consent of the Director of the Commission's Utilities Division.

9. COMPLIANCE TRAINING.

Qwest agrees to continue its Compliance Training Program for existing and new employees in the Local Network Services, Wholesale Markets, Product Management, Public Policy, and Law Departments for a minimum period of three years from the Effective Date of the Commission's Decision approving the Settlement Agreement. The Compliance Training Program is an internal web-based training program on compliance with Section 252(e) of the Act.

10. OPT-IN FOR ELIGIBLE CLECS.

Any CLEC currently certificated and operating in Arizona may opt-in to the non-monetary provisions relating to Section 251(b) and (c) services of any agreement listed on Table 1 of the pre-filed Direct Testimony of Marta Kalleberg in Docket No. RT-00000F-02-0271. In exercising opt-in, however, the CLEC must satisfy the criteria under Section 252(i), including but not limited to, assuming any and all related terms in the agreement it chooses.

If a dispute between Qwest and the CLEC arises regarding the eligibility of the CLEC to opt-in to certain provisions of any agreement, Qwest and/or the CLEC may submit a request for a Commission determination in Phase II of Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act).

11. WITHDRAWAL OF FEDERAL APPEAL.

Qwest further agrees to voluntarily move to dismiss with prejudice its appeal of the Commission's Opinion and Order issued on June 12, 2002, Decision No. 64922, in *Investigation Into Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts*, Phase II, ACC Docket No. T-00000A-00-0194 that it filed in the United States District Court for the District of Arizona (Case No. CIV 02-1626 (PHX-SRB), captioned *Qwest Corporation v. Arizona Corporation Commission, et al.* ("the Appeal")) within 30 days of the Effective Date of the Commission's Decision approving the Settlement Agreement.

Until its filing for dismissal is made with the Court, Qwest agrees to seek whatever extensions of time are necessary and to inform the Court that a settlement has been entered into with the Commission that would result in dismissal of the Appeal. The Staff agrees to support Qwest's motion to dismiss the Appeal, and any extensions of time which Qwest requests.

Each party to the Appeal, however, will be required to bear its own attorneys' fees and costs incurred therein.

12. RETENTION OF CONSULTANT FOR IMPLEMENTATION OF WHOLESALE RATES.

Qwest further agrees that within 90 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest shall retain and thereafter pay for an independent third-party consultant, selected by the Director of Utilities with input from Qwest. Qwest's obligation to pay the billings of the third party consultant shall be limited to a total payment of no more than \$150,000. The scope of the Consultant's work shall be determined by the Commission Staff with input from Qwest and interested parties. The Consultant shall provide independent assessments to the Commission and its Staff of improvements made to automate Qwest's wholesale rate implementation processes. The Consultant shall provide

recommendations on further process changes with the goal of mechanizing of Qwest's wholesale implementation processes, to the extent technologically and economically feasible. Qwest agrees to meet with Staff to discuss the economic and practical feasibility of implementing the recommendations contained in such reports. Qwest shall retain the Consultant for a period of three years from the Effective Date of the Commission's Decision approving this Settlement Agreement but may terminate its retention of the consultant prior to the end of the three year period only upon the written consent of the Director of the Commission's Utilities Division.

13. COST DOCKET GOVERNANCE TEAM.

Qwest agrees to continue its Cost Docket Governance Team for a period of three years from the Effective Date of the Commission's Order approving the Settlement Agreement. The Cost Docket Governance Team is a team comprised of executive level personnel from organizations within Qwest with primary involvement and responsibility for wholesale cost docket implementation in Arizona. Those organizations include: Wholesale Product Management, Wholesale Service Delivery, and Public Policy. The purpose of the team is to provide both an oversight role and to serve as an escalation point for issues or obstacles that may arise during the implementation process. Qwest may dissolve the OSC Governance Team before the end of the three year period only with the Director of Utilities' written consent.

14. NOTIFICATION OF WHOLESALE RATE CHANGES TO COMMISSION AND CLECS.

Qwest further agrees to provide prompt written notification to its wholesale customers in Arizona of changes in their wholesale rates upon the occurrence of any of the following events: (a) the issuance of a final Commission Decision changing wholesale rates, which contains updated wholesale rate sheets; and (b) the appearance of the new Commission-approved wholesale rates on customer bills. Qwest shall promptly provide information to the Commission

and Staff concerning the status and time frames for implementation of future changes in wholesale rates.

Qwest shall meet and confer with Staff one year from the Effective Date of the Commission's Decision approving the Settlement Agreement concerning: (a) the status of Qwest wholesale rate implementation in Arizona; (b) current industry expectations relative to wholesale rate implementation; and (c) Qwest business practices relative to wholesale rate implementation and the negotiation of interconnection agreements with other Arizona carriers.

15. WHOLESALE RATE IMPLEMENTATION.

Qwest shall file its initial compliance filing including a numeric price list within fourteen (14) days of a recommended opinion and order. If Qwest determines that additional time is necessary to complete the filing based on good cause, such as the absence of essential information in the recommended opinion and order to permit numeric wholesale rates to be calculated or a need to restructure the applicable cost model, Qwest shall apply to the Commission for an extension of time to make the compliance filing. Qwest shall implement prospectively all ordered wholesale rates within 60 days from the effective date of the final Commission Decision approving rates and setting forth the numeric wholesale rates to be implemented. Qwest will use its best efforts to determine the numeric rates resulting from the Commission's modifications to the recommended opinion and order in a timely fashion, for inclusion in a final Commission Decision approving new wholesale rates and setting forth numeric wholesale rate changes. Within 60 days from the effective date of the final Commission Decision approving new wholesale rates and setting forth new numeric wholesale rates to be implemented, Qwest shall perform all necessary back-billing back to the effective date of the Commission's Order setting forth the new numeric rates. Qwest may petition the Commission for additional time to implement these rates in the event there are circumstances

beyond Qwest's control that necessitate additional time for implementation, and the Commission shall not withhold approval of such request upon good cause shown.

16. FILING OF SETTLEMENT AGREEMENTS.

Commencing on the Effective Date of the Commission's Decision approving the Settlement Agreement, Qwest shall docket, within ten days of execution, with the Commission any settlement agreements reached in Commission dockets of general application. On December 31, 2003 and for three years from the Effective Date of the Commission's Order approving the Settlement Agreement, Qwest shall submit to Staff a written statement attesting to the fact that Qwest either has not reached any settlement agreements in Commission dockets of general application for the applicable year, or has docketed such settlement agreements with the Commission.

17. EFFECTIVE DATE.

The "Effective Date" as used in this Agreement shall mean the date by which the Commission's Order approving this Settlement Agreement becomes final by the expiration of the periods set forth in A.R.S. Section 40-253 for the filing and consideration of an application for rehearing.

18. DISMISSAL OF LITIGATION.

Issuance of the Commission's Decision Approving this Settlement Agreement shall constitute full and final resolution of the Litigation, and the Decision shall include an order terminating and closing Phase I of Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act); Docket No. T-00000A-97-0238 (271 Subdocket) (Qwest's Interference with the 271 Regulatory Process); and Docket No. T-01051B-02-0871 (OSC Regarding Qwest's Failure to Implement Wholesale Rates in a Timely Manner).

19. COMMISSION APPROVAL AND SEVERABILITY.

Each provision of this Agreement is in consideration and support of all other provisions, and expressly conditioned upon acceptance and approval by the Commission without change. Unless the Parties to this Agreement otherwise agree, in the event that the Commission does not accept and approve this Agreement according to its terms, then it shall be deemed withdrawn by the Parties and the Parties shall be free to pursue their respective positions in the Litigation without prejudice.

20. COMPROMISE.

This Agreement represents the Parties' mutual desire to compromise and settle all disputed claims at issue in the Litigation in a manner consistent with the public interest and based upon the pre-filed testimony and exhibits and the evidentiary record developed in the Litigation. This Agreement represents a compromise of the positions of the Parties. Acceptance of this Agreement is without prejudice to any position taken by any party in the Litigation and none of the provisions may be referred to, cited or relied upon by any other party in any fashion as precedent or otherwise in any proceeding before this Commission or any other regulatory agency or before any court of law for any purpose except in furtherance of the purposes and results of this Agreement.

21. PRIVILEGED AND CONFIDENTIAL COMMUNICATIONS.

All negotiations relating to or leading to this Agreement are privileged and confidential, and no party is bound by any position asserted in negotiations, except to the extent expressly stated in this Agreement. As such, evidence of conduct or statements made in the course of negotiation of this Agreement are not admissible as evidence in any proceeding before the Commission, any other regulatory agency or any court.

22. COMPLETE AGREEMENT.

This Agreement represents the complete agreement of the Parties. There are no understandings or commitments other than those specifically set forth herein. The Parties acknowledge that this Agreement resolves all issues that were raised in the Litigation and is a complete and total settlement between the Parties.

23. SUPPORT AND DEFEND.

Each Signatory Party will support and defend this Agreement and any order entered by the Commission approving this Agreement before the Commission or other regulatory agency or before any court in which it may be at issue.

24. APPEALS AND CHANGE OF LAW.

The Parties believe that this Settlement Agreement is in the public interest and lawful. Nothing herein shall be construed as prohibiting Qwest from obtaining a refund of the Cash Payment from the State Treasury made pursuant to Paragraph 1 of the Settlement Agreement, or from conditioning the tender of the Cash Payment to the State Treasury upon the right to a refund, if the court of the highest jurisdiction to which the matter is appealed should ultimately find in a final, nonappealable order that the Settlement Agreement is unlawful or that the Commission Decision approving the Settlement Agreement is reversed. If such condition precludes the acceptance of the Cash Payment by the State Treasury, then the Cash Payment under Paragraph 1 of this Settlement Agreement shall be placed in an interest-bearing escrow account at a financial institution that is mutually agreed to by Staff and Qwest. If no appeal of the Commission Decision approving the Settlement Agreement is filed or if the Court ultimately enters a final, nonappealable order finding the Settlement Agreement is lawful or the

Commission Decision approving the Settlement Agreement is affirmed, the principal and interest contained in the escrow account shall be paid to the State Treasury without further condition. If the court of the highest jurisdiction to which the matter is appealed ultimately finds in a final, nonappealable order that the Settlement Agreement is unlawful or the Commission Decision approving the Settlement Agreement is reversed, the principal and interest contained in the escrow account shall be returned to Qwest. It is further understood that if the court of the highest jurisdiction to which the matter is appealed should ultimately find in a final, nonappealable order that the Settlement Agreement is unlawful or the Commission Decision approving the Settlement Agreement is reversed, Qwest will have no further obligation to make any remaining Voluntary Contributions pursuant to Paragraph 2 of the Settlement Agreement. If a court of lower or intermediate jurisdiction enters an order finding the Settlement Agreement is unlawful or that the Commission's Decision approving the Settlement Agreement shall be reversed, Qwest's obligations pursuant to Paragraphs 1 and 2 will be suspended until the entry of a final, nonappealable order of a higher court finding the Settlement Agreement is lawful or that the Commission Decision approving the Settlement Agreement is affirmed. The Staff shall not oppose Qwest obtaining from the State Treasury a refund of the Cash Payment or Qwest conditioning the payment of the Cash Payment to the State Treasury on the right to a refund, all as set forth in this Paragraph 24. Except as specifically provided in this Paragraph 24, Qwest shall not otherwise place conditions on the payment of the Cash Payment to the State Treasury. In the event that the State Treasury does not accept Qwest's conditional tender of the Cash

Payment, Qwest agrees to negotiate in good faith with the State Treasury in an effort to reach mutually-acceptable conditions for tender of the Cash Payment prior to placing the Cash Payment in an escrow account pursuant to this Paragraph.

DATED this 25th day of July, 2003.

ARIZONA CORPORATION COMMISSION

BY: 

QWEST CORPORATION

BY: 

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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER

Chairman

JAMES M. IRVIN

Commissioner

WILLIAM MUNDELL

Commissioner

JEFF HATCH-MILLER

Commissioner

MIKE GLEASON

Commissioner

IN THE MATTER QWEST CORPORATION'S
COMPLIANCE WITH SECTION 252(e) OF THE
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. RT-00000F-02-0271

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH SECTION 271 OF THE
COMMUNICATIONS ACT OF 1996

DOCKET NO. T-00000A-97-0238

ARIZONA CORPORATION COMMISSION,

DOCKET NO. T-01051B-02-0871

Complainant,

v.

QWEST CORPORATION,

Respondent.

DAVID ZIEGLER

REBUTTAL TESTIMONY IN SUPPORT OF PROPOSED SETTLEMENT AGREEMENT

ON BEHALF OF

QWEST CORPORATION

1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is David Ziegler. My business address is 4041 North Central Avenue, Phoenix,
4 Arizona 85012.
5

6 **II. PURPOSE AND SUMMARY OF TESTIMONY**

7 **Q. WHAT IS THE PURPOSE OF QWEST'S REBUTTAL TESTIMONY IN THIS**
8 **DOCKET?**

9 A. The purpose of my testimony is to support the Proposed Settlement Agreement dated July
10 25, 2003, between Staff and Qwest (the "Settlement" or "Agreement") and to explain why
11 the Settlement reflects the interests presented by each of the parties to the underlying cases
12 and is a balanced compromise of those interests. I also will address and clarify issues
13 pertaining to the Settlement, which have been raised by witnesses who filed testimony in
14 opposition to the Settlement. Specifically, I will discuss portions of the testimony of
15 AT&T Communication of the Mountain States, Inc and TCG Phoenix ("AT&T"), the
16 Residential Utility Consumer Office ("RUCO"), Mountain Telecommunications, Inc.
17 ("MTI"), and Arizona Dialtone, Inc. ("Arizona Dialtone"). I also will address general
18 comments filed on behalf of WorldCom, Inc. ("WorldCom") and Time Warner Telecom of
19 Arizona LLC ("Time Warner").
20

21 **III. HISTORY OF SETTLEMENT NEGOTIATIONS**

22 **Q. DESCRIBE THE PROCESS LEADING UP TO THE EXECUTION OF THE**
23 **SETTLEMENT.**

24 A. When Qwest decided it was appropriate to attempt to settle these dockets, it first
25 approached the Commission Staff to determine whether Staff had any interest in settling
26 them. Qwest believed that if Staff was not interested in attempting to reach a settlement,

1 there was no purpose in going further.

2
3 Qwest and Staff then engaged in a series of informal discussions (without counsel) that
4 resulted in a list of "deal points" setting forth the very basic concepts behind a possible
5 settlement. Other interested parties were given over 20 days in which to provide input on
6 and participate in the drafting of a final agreement. Staff notified all interested parties of
7 the potential settlement on July 3, 2003. *See* Exhibit DZ-2. The notification included a
8 written summary of agreed-upon principles of settlement and solicited written and oral
9 comments. *Id.* The summary reflected the specific deal points reached between Staff and
10 Qwest, and expressly noted that such points would "continue to evolve" and would be
11 "revised and refined in the process of further negotiations" and the preparation of a draft
12 agreement. *Id.* In addition, Staff conducted two settlement meetings open to all parties in
13 order to receive additional comment and consider any concerns raised by the CLECs and
14 others. The Settlement itself was not finalized and executed until July 25, 2003.

15
16 **Q. WHY DO YOU BELIEVE THAT NONE OF THE CLECS HAVE JOINED IN THE**
17 **SETTLEMENT?**

18 A. Generally, the CLECs argue that the Settlement is defective and ignores their interests
19 because none of the CLECs have signed it. However, under the terms of the Settlement,
20 CLECs are not required to execute or support it before the Commission in order to obtain
21 the benefits the Settlement provides to them. That is, the CLECs can receive each of the
22 credits provided in the Settlement without regard to any advocacy position taken in the
23 approval proceedings. The CLECs can oppose the Settlement and seek to increase the
24 level of benefits to them under the Agreement. Once the Agreement is approved, each
25 CLEC, including those who opposed it, can then determine whether or not to accept the
26 Agreement in exchange for a release. Therefore, the CLECs have no economic incentive

1 to support the Agreement. They can adopt a "wait and see" attitude, attempt to expand
2 Settlement benefits to their advantage, and ultimately receive the benefits of the
3 Agreement despite their opposition.
4

5 **Q. IF THE COMMISSION APPROVES THE SETTLEMENT ARE THE CLECS**
6 **BOUND BY ITS TERMS EVEN IF THEY DO NOT JOIN IN THE AGREEMENT?**

7 **A.** The Settlement provides the CLECs with the option of (a) accepting the credits offered
8 under its terms and signing a release; or (b) rejecting the credits and pursuing their claims
9 against Qwest. Nothing in the Settlement requires the CLECs to accept its terms or
10 conditions. The Agreement ends the pending dockets and concludes litigation between
11 Qwest and Staff over the issues raised in these dockets. The CLECs retain the right to
12 reject the credits and pursue whatever claims they might have against Qwest.
13

14 It is worthwhile to note that all CLECs, except Eschelon and McLeod, are eligible for
15 credits if they meet the criteria set forth in the Agreement. Therefore, even CLECs that
16 entered into agreements with Qwest that were not filed with the Commission for its
17 approval, will be able to take advantage of the credit provisions of the Settlement.
18

19 **II. PURPOSE OF THE SETTLEMENT**

20 **Q. AT&T COMPARED THE SETTLEMENT AGREEMENT TO SELECTED**
21 **FILINGS. DO THOSE FILINGS "PROVIDE AN OBJECTIVE MEASURING**
22 **STICK FOR DETERMINING WHETHER THE SETTLEMENT IS FAIR,**
23 **REASONABLE, IN THE PUBLIC INTEREST AND SUPPORTED BY THE**
24 **EVIDENCE"?**

25 **A.** No, they tell only a small part of the story. The list of eight filings in AT&T's testimony
26 represents, at best, the very tip of a rather large iceberg and leaves out the overwhelming

1 bulk of the evidence before the Commission in these cases.

2
3 Q. DO YOU AGREE WITH AT&T'S CHARACTERIZATION, AT PAGE 4, LINES
4 25-27 AND AGAIN ON PAGES 7-10, OF STAFF'S FILINGS IN THESE
5 DOCKETS AS "FINDINGS AND CONCLUSIONS" BASED ON THE STAFF'S
6 "INDEPENDENT REVIEW OF THE EVIDENCE?"

7 A. I have no doubt that Staff conducted an independent review of the materials produced by
8 Qwest in response to discovery requests served in these dockets, as well as discovery and
9 hearing testimony from similar proceedings in other states, and based its filings and
10 litigation positions on the results of that review. That said, Staff's filings are not
11 "findings," because Staff does not function in these (or any other) proceedings as an
12 adjudicator, but rather as an advocate. It is incorrect to argue that Staff's "findings"
13 represent an outcome in these proceedings, and to attack the Settlement as inconsistent
14 with those "findings."

15
16 Each of these dockets was vigorously contested. The many parties – Staff, RUCO,
17 CLECs, and Qwest – disagreed on interpretations and applications of the governing law as
18 well as many of the operative facts. In each of these proceedings, Staff appeared and
19 functioned as a *party* that sought, like any other party, to develop a record and make
20 arguments designed to convince the decision maker – first the Administrative Law Judge
21 ("ALJ"), and ultimately the Commission – to make certain rulings and take certain
22 actions. The Settlement represents a negotiated resolution of the many disputed issues in
23 the face of conflicting evidence and legal arguments. To reach this Agreement, Qwest
24 and Staff compromised their respective litigation positions.
25
26

1 Q. BUT AREN'T STAFF'S VIEWS ENTITLED TO CONSIDERABLE REGARD BY
2 THE COMMISSION?

3 A. Of course they are, but in the appropriate context. In the three underlying dockets, Staff
4 participated as a party – a party charged with pursuing outcomes that it viewed to be in the
5 public interest (as opposed to the specific interest of an individual company or group of
6 companies). When Staff pursues a litigation position, as it did in each of these dockets
7 before the Settlement was reached, Staff does not win outright simply by articulating its
8 view of the public interest – it takes on a burden of proof and the obligation to persuade
9 the ALJ and the Commission that its views are correct.

10
11 When, however, Staff negotiates a resolution to a contested proceeding, particularly after
12 all of the evidence and testimony have been received, Staff's judgment about the
13 reasonableness of the settlement under the circumstances of the case is entitled to
14 deference. It means something that Staff participated in all of these proceedings directly,
15 evaluated its position against Qwest's position and the positions of the other participants,
16 weighed the parties' litigation risks and possible outcomes, negotiated with the other
17 parties, and agreed with Qwest that the Agreement currently before the Commission is in
18 the public interest.

19
20 AT&T would have the Commission view Staff's litigation position as the rigid benchmark
21 for analyzing the terms of the Settlement, but would ignore Staff's judgment as to the
22 fairness and reasonableness of the Agreement.

1 Q. AT&T AND OTHER CLECS CRITICIZE THE SETTLEMENT AS "FLAWED
2 BECAUSE IT FAILS TO FOCUS ON ADEQUATELY ADDRESSING THE HARM
3 TO COMPETITION AND THE CLECS." DO YOU AGREE WITH THIS
4 STATEMENT?

5 A. No, I do not. There is nothing "flawed" about a vigorously negotiated compromise based
6 on judgments associated with the litigation risk of presenting and arguing the many issues
7 raised in the dockets at issue. It is my understanding that both Qwest and Staff engaged in
8 their own assessments of such risks and made settlement offers and counterproposals
9 considering a variety of possible outcomes if these issues continued to be litigated. The
10 Settlement thus reflects a balanced compromise of all of the issues between Staff and
11 Qwest present in the pertinent dockets.

12
13 Q. ON PAGE 5 OF ITS TESTIMONY, AT&T ARGUES THAT BECAUSE THE
14 CLECS WERE "EXCLUDED FROM [SETTLEMENT] NEGOTIATIONS" THE
15 AGREEMENT REFLECTS DIFFERENT PRIORITIES AND PRINCIPLES THAN
16 THOSE PREFERRED BY THE CLECS.

17 A. This statement, in essence, provides support for the fact that the Settlement reflects a fair
18 and reasonable compromise of different "priorities and principles" that are important not
19 just to AT&T, but also to other constituents. For example, in discussing how "[t]his
20 difference in priorities can be readily seen," AT&T points to the voluntary contributions
21 provision contained in the Settlement: "This provision provides no benefit to CLECs. I
22 cannot imagine any CLEC proposing such a provision." Pelto at 5. However, the benefits
23 achieved under the Settlement should not accrue just to the CLECS alone (who are not
24 obligated under the Settlement to pass on the credits they receive to their own customers).
25 Global settlements, such as the one proposed here, must fairly address the interests and
26 concerns of the Commissioners, Staff, RUCO, Qwest, and other CLECs, as well as

1 Arizona ratepayers. Staff fairly represented all of these interests in negotiating the
2 Settlement.
3

4 **Q. HOW DO YOU RESPOND TO RUCO'S DESCRIPTION OF THE EVIDENCE**
5 **PRESENTED IN THE DOCKETS AT ISSUE?**

6 **A.** Like AT&T, RUCO simply restates its litigation positions and fails to consider all of the
7 interests and risks of the parties in these three cases.
8

9 Again, the fairness and propriety of this Settlement must be considered in the context of
10 disputed cases that parties could win or lose outright. It may be that some parties are
11 more confident about ultimate victory than others. But settlements necessarily represent a
12 compromise, with each party making concessions that, on balance, lead to a collectively
13 agreeable resolution, and flow from a judgment that the compromise is better than the
14 possibility of losing. Parties to settlements do not get everything they want – indeed,
15 typically the fairest and most balanced settlements are the ones in which all parties feel
16 unsatisfied. It is not fair to criticize this or any other settlement for failing to meet every
17 demand of every interested or potentially interested party.
18

19 **Q. WHAT CONCESSIONS HAS QWEST MADE IN THE SETTLEMENT?**

20 **A.** I addressed the terms of the Agreement in my opening testimony and will not repeat that
21 discussion here. But it is worth reiterating that this Agreement imposes very real financial
22 costs on Qwest and benefits to CLECs and the State of Arizona that are not contingent
23 upon any findings of wrongdoing. Different commentators offer different objections to
24 the financial and non-financial provisions of the settlement – among other things, AT&T,
25 WorldCom, and Arizona Dialtone would amend the Agreement to increase Qwest's
26 financial liability to CLECs, while RUCO would expand the non-monetary concessions to

1 include formal findings of wrongdoing. These differences only highlight the range of
2 special interests across the industry and the sheer impracticability of reaching an
3 agreement that could satisfy all of those interests simultaneously.
4

5 III. PROPOSED FINDINGS

6 Q. BOTH RUCO AND AT&T RECOMMEND THAT THE COMMISSION, AS PART
7 OF ANY ORDER APPROVING THE SETTLEMENT, INCLUDE SPECIFIC
8 FINDINGS THAT QWEST HAS ENGAGED IN ILLEGAL ACTS WITH
9 RESPECT TO THE 252 UNFILED AGREEMENTS DOCKET AND THE 271
10 SUBDOCKET. WOULD THE INCLUSION OF SUCH FINDINGS IN AN ORDER
11 SIGNIFICANTLY DEPART FROM THE TERMS OF THE AGREEMENT?

12 A. Yes. The Settlement expressly provides that Qwest denies any wrongdoing, and that the
13 Agreement represents a compromise and settlement of disputed claims that may not be
14 construed for any other purpose. Any findings, such as those sought by RUCO, would
15 significantly vary these terms. The very nature of a settlement is that the parties agree to a
16 resolution without any party admitting the validity of another's claims and/or defenses.
17 The Settlement contains specific commitments from Qwest and provides that a failure to
18 meet those commitments is punishable by contempt. Nothing in the Agreement limits the
19 Commission's ability to address other problems. RUCO and AT&T's notion that Qwest
20 should be forced to admit wrongdoing (or that the Commission could, on its own, create
21 such an admission in this manner) is contrary to the idea of settlement, raises due process
22 concerns, and gives no weight to the important public interest served by settlement.
23

24 Qwest would not agree to a settlement that included such findings. Settlements represent
25 a compromise, not a capitulation. To reach a settlement containing findings of
26 wrongdoing, Qwest would have to abandon altogether its legally and factually well-

1 founded positions. The Settlement is consistent with Arizona's public policy encouraging
2 the resolution of disputes and with the common practice for settlement agreements not to
3 contain or require admissions of liability.

4
5 Qwest has agreed to a settlement that requires substantial financial and non-financial
6 commitments. It addresses the alleged harms to CLECs, addresses alleged harms to the
7 Commission and its processes, offers benefits to Arizona consumers, and provides
8 tangible assurances of Qwest's compliance going forward. The Settlement accomplishes
9 these important goals now, without further proceedings or lengthy appeals, and allows the
10 Commission and its Staff to devote its resources to other matters.

11
12 **IV. ISSUES UNRELATED TO THE UNFILED AGREEMENTS DOCKET, 271**
13 **SUBDOCKET, AND THE OSC.**

14 **Q. HAVE ANY OF THE PARTIES TO THESE DOCKETS RAISED CONCERNS OR**
15 **ISSUES THAT FALL OUTSIDE THE SCOPE OF THE DOCKETS?**

16 **A.** Yes. Arizona Dialtone has filed extensive testimony concerning its unhappiness with
17 Qwest relative to the negotiation and implementation of its interconnection agreement
18 with Qwest and with Qwest's proposed rates for PAL services. AT&T has raised certain
19 issues concerning how Qwest provides DUF files to CLECs. MTI has raised an issue with
20 respect to whether any new transport rates set by the Commission are retroactive to June
21 2002. None of these issues relates to these three dockets at issue. I will briefly respond to
22 each.

23
24 As made clear by Staff at the Commission's procedural conference of August 5, 2003, a
25 hearing on the Settlement is not intended to reopen the floodgates to relitigate the relevant
26 dockets or to raise new complaints that were not the subject of these dockets. The issues

1 raised by Arizona Dialtone are not part of these dockets. Most of Arizona Dialtone's
2 testimony relates to complaints about Qwest's handling of matters under its
3 interconnection agreement with Qwest. These matters can be properly raised in a
4 complaint filed by Arizona Dialtone, and are not relevant to these three dockets at issue.
5

6 AT&T complaints concerning the Eschelon workshop and Qwest's provision of Daily
7 Usage Files in the 271 Docket are also are not related to these dockets. AT&T argues that
8 the CLECs should receive the credits related to DUF files on a going-forward basis. This
9 argument is without merit for two reasons. First, the purpose of the credits under the
10 Settlement is to match the credits available to the CLECs with payments allegedly
11 received by Eschelon and McLeod. Second, the DUF issue raised by AT&T has already
12 been resolved in the 271 Docket. While initial tests of the DUF process (performed by
13 CapGemini) or the ROC test (performed by KPMG) evidenced problems, the process of
14 testing and retesting resulted in the fixing of those problems. The Commission entered an
15 order on August 28, 2003 approving Staff's report indicating that Qwest had passed these
16 tests and setting a retest after 271 authority is granted. Additionally, the DUF process is
17 the subject of a PID and Qwest's compliance going forward can be monitored. Qwest will
18 also be subject to payments under the PAP for problems that occur after 271 authority is
19 granted.
20

21 The issues raised by MTI concerning the level of transport rates and the effective date of
22 new transport rates are neither a part of nor related to the 252(e) Unfiled Agreements
23 Docket, the 271 Subdocket, or the Order to Show Cause ("OSC"). They are the subject of
24 a separate proceeding that has already been heard, and consequently, will be resolved
25 there. Despite MTI's characterization that its complaints relate to the OSC docket, they
26 do not. The OSC docket dealt with Qwest's delay in implementing wholesale rates.

1 MTI's concerns relate to the level of the rates implemented and are properly part of the
2 cost docket. In addition, MTI's criticism concerning the sufficiency of the Settlement's
3 proposed penalty, as allocated to the OSC, is incorrect for two reasons. First, Staff
4 proposed a payment of \$189,000.00 to the State. Under the Settlement, Qwest has agreed
5 to pay \$150,000.00. Second, the monies referred to by MTI are at issue in the other
6 proceeding. If MTI proves its case in that proceeding, it will recover them.
7

8 V. CASH PAYMENTS

9 Q. DO YOU AGREE WITH AT&T'S COMPLAINT (AT PAGE 6) THAT THE
10 "CASH PAYMENT" REQUIRED BY THE SETTLEMENT IS "SIMPLY
11 INADEQUATE TO AMOUNT TO A SERIOUS PENALTY?"

12 A. The plain terms of the Settlement impose a cash payment on Qwest related to the actions
13 complained of in the 252(e) Unfiled Agreements Docket, the 271 Subdocket, and the
14 Order to Show Cause. It further requires Qwest to make significant monetary
15 contributions in areas that benefit not only Arizona ratepayers, but also CLEC interests,
16 addressing global telecommunications issues such as the provision of service to unserved
17 and underserved parts of Arizona. In addition, Qwest must issue credits to CLECs to
18 resolve the events raised in these dockets, as well as implement procedures and accede to
19 independent monitoring, thereby demonstrating the commitment to compliance and
20 preventing any recurrence. These and other Settlement provisions are specifically
21 designed to promote competition and provide a remedy in response to CLEC complaints.
22

23 The Settlement has a total value of over \$20 million in cash payments, voluntary
24 contributions, and credits. Under the terms of the Settlement, Qwest will make at least
25 \$11.197 million in payments to the State of Arizona and its citizens, exclusive of CLEC
26 credits.

1
2 **VI. VOLUNTARY CONTRIBUTIONS**

3 **Q. AT&T CRITICIZES THE VOLUNTARY CONTRIBUTIONS PROVISION OF**
4 **THE SETTLEMENT, INCLUDING BROADBAND DEPLOYMENT, AS**
5 **"INAPPROPRIATELY REDUC[ING] PENALTIES PAYABLE TO THE STATE."**
6 **ARE THESE CRITICISMS VALID?**

7 **A.** The CLECs want all of the money to go to them in increased credits or to be taken in an
8 increased cash payment to the State Treasury. The CLECs advance their position that the
9 harm resulting in these related dockets, and from the Settlement itself, is harm to
10 competition and competitors. This ignores the fact that one of the purposes of
11 transitioning to a competitive market is to benefit the Arizona ratepayers. The Settlement
12 appropriately balances the interests of all parties. CLECs benefit through the credit
13 provisions; the State of Arizona benefits through the cash payments made by Qwest to the
14 General Fund; and the ratepayers directly benefit through voluntary contributions made by
15 Qwest in the form of support to community and charitable foundations, consumer
16 education programs, and investment to help meet the telecommunication needs of the
17 State.

18
19 **Q. THE CLECS RAISE A NUMBER OF CONCERNS ABOUT AN ALLEGED**
20 **ANTI-COMPETITIVE IMPACT OF THE VOLUNTARY CONTRIBUTIONS OR**
21 **A PERCEIVED BENEFIT TO QWEST FOR MAKING THESE**
22 **CONTRIBUTIONS. ARE THEIR CONCERNS VALID?**

23 **A.** Qwest is obligated under the Settlement to demonstrate to Staff that any investment made
24 pursuant to Paragraph 2 of the Agreement is investment that Qwest would not have
25 otherwise made. Second, and more importantly, the Commission retains control over any
26 investment decisions. The Commission, therefore, has the authority to ensure that no

investment is made in an anti-competitive manner and that all such investments are in addition to normal investment that would otherwise have been made. For example, if the Commission approves investment in unserved territory, such investment clearly would be in excess of what Qwest would have otherwise spent because Qwest does not invest in facilities outside of its service territory.

The fair balance of the voluntary contributions provision is evidenced by the different criticisms made by the parties here. Some of the CLECs oppose any voluntary contributions, and especially any investment in broadband facilities. RUCO, on the other hand, in its testimony in the 252(e) hearings, proposed a schedule for broadband deployment throughout the State. Obviously, the Settlement reflects all of the conflicting interests and viewpoints.

Q. AT&T RAISES CONCERNS ABOUT OTHER POTENTIAL BENEFITS TO QWEST FROM THE VOLUNTARY CONTRIBUTIONS. PLEASE COMMENT.

A. AT&T expresses concerns that Qwest will receive public relations benefits and tax deductions to the extent these voluntary contributions are used for charities. However, the Commission, not Qwest, will ultimately approve any charitable contributions. If the Commission chooses not to use any of the money for charitable contributions, there will be none. If the Commission chooses to have some amount contributed to charity, there is nothing inappropriate about the contributions being treated for tax purposes as any other charitable contribution under law.

1 Q. AT&T REFERS TO THE VOLUNTARY CONTRIBUTIONS AS A "\$6 MILLION
2 SLUSH FUND." IS THAT AN ACCURATE CHARACTERIZATION?

3 A. No. As I have indicated in my previous responses, and as the Agreement plainly states,
4 Staff will have significant participation in the selection of projects, and the Commission
5 ultimately has the final authority to decide how the voluntary contributions may be spent.
6 As indicated in correspondence by Commissioner William Mundell addressing the
7 Settlement, parties should think "outside the box" in attempting to resolve these matters in
8 a manner that serves not only their own interests, but also the interests of the State and its
9 ratepayers.

10
11 Q. RUCO HAS ALSO MADE A NUMBER OF CRITICAL COMMENTS
12 CONCERNING THE VOLUNTARY CONTRIBUTIONS PORTION OF THE
13 SETTLEMENT. DO YOU WISH TO RESPOND TO THESE COMMENTS?

14 A. Yes. RUCO argues that if a portion of the voluntary contributions is used for investment
15 in facilities, Qwest should not be able to include that investment in the rate base and earn
16 a return on the investment. RUCO presents no convincing basis to support its position.
17 Again, the Commission has the discretion to determine what portion, if any, of the
18 voluntary contributions will be invested in facilities. Those facilities will, of necessity, be
19 facilities in which Qwest would not otherwise have invested. Given that fact, there is no
20 reason to treat this investment differently from other investments for return purposes.

21
22 RUCO also argues that Qwest should be obligated to commit to a schedule for the
23 deployment of broadband facilities throughout its service territory. I would first note that
24 this suggestion is completely inconsistent with the position taken by AT&T – that none of
25 these monies should be spent on broadband. Further, the Agreement properly balances the
26 interests of all parties, including ratepayers, in arriving at a total settlement. The

Commission has the final authority under the Settlement to determine the use of the \$6 million. If the Commission concludes that some or all of the money should be used for broadband, it will order it to be used that way.

The Agreement expressly provides that the Commission decides where investment (through voluntary contributions) will be made and that such investment may occur where Qwest would not otherwise have made such investment. It is very likely that the Commission and Staff will only pick those investments where no financial case exists for making such investment, as evidenced by the fact that no other CLECs or ILECs have stepped forward to make the investment voluntarily.

VII. CLEC CREDITS

Q. HAVE YOU READ THE TESTIMONY FILED BY AT&T AND ARIZONA DIALTONE, AND THE COMMENTS FILED BY WORLDCOM AND TIME WARNER TELECOM REGARDING THE CREDITS OFFERED TO CLECS AS PART OF THE PROPOSED SETTLEMENT AGREEMENT?

A. Yes, I have.

Q. DO YOU AGREE WITH THEIR COMMENTS REGARDING THE CREDITS?

A. I do not. While I am not a lawyer, and cannot offer legal opinions, it is my understanding that these credits are included as part of the settlement of a case regarding Qwest's compliance with Section 252. As a result, any remedies are appropriately limited to provisions and terms that Qwest and CLECs were required to file for Commission approval.

Moreover, AT&T, Arizona Dialtone, WorldCom, and Time Warner do not recognize that if the credits in the Settlement are approved, Qwest will have compromised substantial rights and defenses. Most significantly, and as I explain in more detail below, Qwest is agreeing to make certain credits available to Arizona CLECs without requiring them to satisfy related terms and conditions, as they would have been required to if they were opting into the agreements under the 252(i) pick and choose process.

THE 10% CREDIT

Q. IN YOUR TESTIMONY YOU DESCRIBE CERTAIN CREDITS THAT WILL BE OFFERED TO CLECS AS PART OF THE SETTLEMENT. ONE OF THE CREDITS YOU DESCRIBE IS THE 10% CREDIT. WHAT IS THE SCOPE OF THIS CREDIT?

A. This credit will be measured by calculating 10% of a CLEC's purchases of Section 251(b) and (c) services under the Act through their interconnection agreement with Qwest or through Qwest's SGAT over an 18-month period from January 1, 2001 through June 30, 2002.

Q. RUCO, AT&T, TIME WARNER, AND WORLDCOM CRITICIZE THE APPLICATION OF THE CREDIT TO ONLY SECTION 251(B) AND (C) SERVICES. DO YOU AGREE WITH THEIR POSITION?

A. No. The reasoning behind the Settlement is entirely consistent with the Act and the Commission's authority. As I said, the issue in the 252(e) Unfiled Agreements docket was Section 252 compliance, and Section 252(e) does not create a filing obligation with regard to non-251(b) or (c) services.

1 Moreover, although the Commission has authority to review agreements to determine
2 whether they are in the public interest, that authority is limited to review of
3 interconnection agreements -- that is, agreements that create ongoing obligations
4 pertaining to Section 251(b) or (c) services.
5

6 Finally, applying the 10% credit only to Section 251(b) and (c) services is a reasonable
7 compromise because Qwest is relinquishing a number of defenses by offering the credit.
8 Most significantly, Qwest is offering the credit without requiring that requesting CLECs
9 be in a similar position and assume the same obligations McLeod and Eschelon did under
10 the subject agreements.
11

12 **Q. AT&T SUGGESTS THAT STATE LAW PROVIDES A BASIS FOR EXTENDING**
13 **THE 10% CREDIT TO NON-SECTION 251 SERVICES. WHAT IS QWEST'S**
14 **POSITION?**

15 **A.** This is largely a legal matter that can be addressed in post-hearing briefing. However, it is
16 my understanding that there is a sound legal basis for the position adopted in the
17 Settlement.
18

19 **Q. DOES THE 10% CREDIT AFFORD THE CLECS A SUBSTANTIAL BENEFIT?**

20 **A.** Yes. Contrary to the assertions of AT&T, the Settlement provides significant benefits to
21 CLECs. First, Qwest is offering credits based upon Section 251 services without also
22 requiring CLECs to assume the same obligations that Eschelon and McLeod assumed in
23 their agreements. For instance, the CLECs will not have to satisfy the significant volume
24 and term commitments contained in the Eschelon and McLeod agreements. Eschelon
25 committed to a volume of \$150 million over a term of 5 years, and McLeod committed to
26 a volume of \$480 million over a term of 3 years. As stated in my August 14, 2003

1 testimony, offering this credit without reference to any volume and term commitments for
2 any eligible CLEC represents a very large concession on the part of Qwest.
3

4 **Q. ON PAGES 16 THROUGH 18 OF ITS TESTIMONY, ARIZONA DIALTONE**
5 **QUESTIONS WHICH SERVICES ARE 251(B) AND (C) SERVICES. IS THERE**
6 **ANY GUIDANCE IN STAFF'S OR QWEST'S TESTIMONY AS TO WHAT**
7 **SERVICES ARE 251(B) AND (C) SERVICES?**

8 **A.** Yes. On page 9 of Mr. Rowell's testimony, Mr. Rowell specifically delineates the types
9 of services covered by Section 251(b) and (c) of the Act. Mr. Rowell explains that
10 "wholesale services specific to the provision of local service," including UNEs, resale
11 services, and collocation charges, fall within Section 251(b) and (c), while intrastate and
12 interstate access, switched access, special access, and private lines do not. Also, the Act
13 itself provides guidance in Sections 251(b) and (c). If a CLEC purchased out of a tariff,
14 those purchases would not be included in the calculation of the 10% credit. However, if a
15 CLEC purchased a Section 251(b) and (c) services from an interconnection agreement,
16 those purchases would be included in the 10% credit.
17

18 **Q. WILL QWEST PROVIDE ARIZONA DIALTONE WITH QWEST'S**
19 **CALCULATION OF THE CREDIT TO WHICH ARIZONA DIALTONE IS**
20 **ENTITLED?**

21 **A.** Yes. Qwest will provide that calculation under separate cover, subject to the
22 Commission's rules regarding Arizona Dialtone's certification.
23
24
25
26

\$13/\$16 CREDITS

Q. PLEASE BRIEFLY DESCRIBE THE \$13 AND \$16 UNE-P CREDITS OFFERED TO CLECS IN SECTION 5 OF THE PROPOSED SETTLEMENT.

A. I describe these credits and the basis for offering them in detail in my direct testimony on pages 14 through 16. In short, these credits are based on two agreements between Qwest and Eschelon that resolved a dispute between the parties regarding the accuracy of daily usage files that were provided to Eschelon through a manual process. The daily usage files in turn were used by Eschelon to bill interexchange carriers for all forms of switched access. Mr. Rowell also described the credits in his testimony. I would like to clarify that although Mr. Rowell states on page 12 lines 17-18 that the \$13/\$16 credits are to be offset by "amounts billed by the CLEC from interexchange carriers for terminating intraLATA toll," in fact the credits are to be offset by amounts billed by the CLEC from interexchange carriers for both terminating and originating toll, including both intraLATA and interLATA toll.

Q. HAVE YOU READ AT&T'S, WORLDCOM'S, AND ARIZONA DIALTONE'S COMMENTS AND TESTIMONY REGARDING THE REQUIREMENT IN THE PROPOSED SETTLEMENT THAT CLECS PROVIDE QWEST WITH CERTAIN DOCUMENTATION IN ORDER TO RECEIVE THE \$13/\$16 CREDIT?

A. I have. Under the terms of the Settlement, to obtain the credit, a CLEC must submit to Qwest information regarding the months that the CLEC did not receive accurate daily usage information; the reasons it believes the information was inaccurate; the average number of UNE-P lines leased by the CLEC for each relevant month; and the total amount the CLEC actually billed interexchange carriers for switched access in each relevant month. Generally, AT&T, WorldCom, and Arizona Dialtone argue that it will be difficult for CLECs to provide information regarding inaccuracies in their daily usage files and

1 state that Qwest can more easily gather the information.

2
3 **Q. DO YOU AGREE WITH THEIR COMMENTS AND TESTIMONY?**

4 A. No. Qwest would simply be unable to calculate the amount of any credits owed to CLECs
5 without some mechanism for Qwest to obtain the relevant billing information from the
6 CLECs. As I stated, the \$13/\$16 per line credits are to be offset by the CLECs' actual
7 billings to IXC. Otherwise, CLECs would doubly recover access costs – first from the
8 IXC in question and second from Qwest. However, only the CLECs have the
9 documentation of their billings to IXC. Qwest has never had any access, nor would it
10 under any circumstances, to the switched access billings of any CLEC to an IXC. Without
11 the procedures established in the Settlement, Qwest could not calculate the offset because
12 none of the relevant information is within Qwest's possession or control.

13
14 **Q. WHAT IS THE RESULT IF A CLEC IS UNABLE TO PROVIDE THE**
15 **DOCUMENTATION REQUIRED BY THE SETTLEMENT?**

16 A. In the case of the \$13/\$16 credit, a CLEC that does not provide Qwest with the relevant
17 information is not eligible to receive the credit. This situation is different from the
18 situation regarding the \$2 per line per month credit offered in paragraph 4 of the proposed
19 settlement. The \$2 credit was based on a settlement agreement with Eschelon regarding
20 Eschelon's termination of Qwest's intraLATA toll to customers served by an Eschelon
21 switch. Like the credit in the Eschelon settlement agreement, the credit offered in the
22 Settlement is offset by any payments a CLEC received from Qwest for the termination of
23 intraLATA toll, because the CLEC has already been compensated to that extent. The
24 Settlement requires CLECs to submit certain information to Qwest to receive the \$2
25 credit. However, unlike the documentation required for the \$13/\$16 credit, it is possible
26 that Qwest and the CLEC both would have relevant documents. As a result, the

1 Settlement allows CLECs to receive the credits based on Qwest's documentation if Qwest
2 possesses it, or, if Qwest no longer has relevant records, a CLEC may receive the amount
3 that Qwest actually paid Eschelon each month (which is \$0.96 per line per month). This
4 type of compromise is simply not feasible or fair with regard to the \$13/\$16 credit, where
5 Qwest does not now and never would have had access to the switched access billings of
6 any CLEC to an IXC.
7

8 **Q. ARE CLECS ELIGIBLE FOR THE CREDIT IF THEY RECEIVED ACCURATE**
9 **DUF RECORDS FROM QWEST?**

10 A. No. The purpose of the credit offered to Eschelon and the credit in the Settlement is to
11 compensate CLECs for any inaccuracies in their DUF records. Therefore, if a CLEC
12 received accurate records from Qwest, there would be no reason for it to receive the
13 credit. Moreover, if CLECs have not raised concerns regarding their DUF records, do not
14 check the accuracy of their switched access billing, or did not bill interexchange carriers
15 for switched access, there is no reason for them to receive this type of credit. Moreover,
16 the issues raised by Arizona Dialtone regarding conversion to UNE-P during the relevant
17 time period would be more appropriately addressed in a separate proceeding and, as I
18 explain in more detail below, are outside the scope of the Release CLECs are required to
19 execute in order to receive the credits.
20

21 **Q. IS QWEST MAKING CONCESSIONS BY OFFERING THE \$13/\$16 CREDIT**
22 **DESCRIBED IN THE PROPOSED SETTLEMENT?**

23 A. Yes. Eschelon and McLeod, which purchased variations of the UNE-Star platform,
24 received DUF records through a manual process. In contrast, CLECs on the UNE-P
25 platform received DUF records through a mechanized process. Qwest's agreement to pay
26 Eschelon a per-line credit expressly provides that the credits would cease when a

1 mechanized process was in place for the UNE-Star platform. As part of the Settlement,
2 Qwest is not asserting that CLECs must have been receiving DUF records through the
3 manual process in order to be eligible for the credit. Therefore, CLECs who obtained
4 DUF records through a mechanized process and are receiving the credit under the
5 Settlement are in fact receiving more than even Eschelon was entitled to. The Eschelon
6 credit also shows that a \$15 million volume commitment was related to the per-line credit.
7 As part of the Settlement, Qwest is also not asserting that CLECs must accept the volume
8 commitment in order to receive the per-line credit. However, CLECs must still show that
9 the DUF records they received, through either the manual or mechanized process, were in
10 fact inaccurate.

11
12 **Q. ARIZONA DIALTONE PROPOSES MODIFYING THE PROPOSED**
13 **SETTLEMENT "TO CLARIFY THAT QWEST CANNOT APPLY ANY OF THE**
14 **CREDITS TO OUTSTANDING BILLS THAT THE CLEC HAS DISPUTED." DO**
15 **YOU AGREE WITH THAT PROPOSED MODIFICATION?**

16 **A.** I do not. If a CLEC has any dispute over an outstanding bill, it should resolve that dispute
17 through the dispute resolution process established in the CLEC's interconnection
18 agreement with Qwest or in the SGAT.

19
20 TIME PERIOD FOR CREDITS

21 **Q. AT&T, ARIZONA DIALTONE, AND WORLDCOM ARGUE THAT THE 10%**
22 **CREDIT AND THE PER-LINE CREDITS SHOULD APPLY PROSPECTIVELY**
23 **RATHER THAN RETROACTIVELY. DO YOU AGREE?**

24 **A.** No. The purpose of the credit provisions of the Settlement is to provide the other CLECs
25 with the same discounts on 251(b) and (c) services that were allegedly given to Eschelon
26 and McLeod. To do this, the credits should be given for the same time period that

1 Eschelon and McLeod received the discounts at issue.

2
3 **Q. IS THERE ANY EVIDENCE IN THE RECORD FROM THE UNFILED**
4 **AGREEMENTS PROCEEDING TO JUSTIFY PROVIDING ANY CLEC WITH A**
5 **GOING-FORWARD DISCOUNT OR CREDITS?**

6 A. Not that I am aware of, and the CLECs do not cite any. Qwest has reached legitimate
7 settlement agreements with both McLeod and Eschelon and terminated any alleged
8 discount that each received. Although Arizona Dialtone speculates that the "early
9 termination payments" pursuant to the settlement agreements gave McLeod and Eschelon
10 the benefit of a prospective discount, that speculation is contradicted by McLeod's
11 comments filed with the Commission on April 30, 2003, stating that McLeod had not
12 received the value of a prospective discount.

13
14 **Q. WORLDCOM, ARIZONA DIALTONE, AND RUCO ALSO COMPLAIN ABOUT**
15 **THE DURATION OF THE 10% CREDIT IN THE PROPOSED SETTLEMENT**
16 **AGREEMENT. HOW DO YOU RESPOND TO THOSE COMPLAINTS?**

17 A. WorldCom and Arizona Dialtone suggest that the 10% credit be extended to a 5-year
18 term, and RUCO suggests that the 10% credit be extended to a 3-year period. These
19 suggestions are inconsistent with the duration of the alleged interconnection agreements at
20 issue and any benefits actually received by McLeod or Eschelon, and would be
21 discriminatory if they were implemented. The documents serving as the premise to the
22 alleged discounts for Eschelon and McLeod were in effect for approximately 10-½ months
23 and 18 months, respectively. The 10% credit in the Settlement covers an 18-month
24 period, a term equal to the longest duration of any of the allegedly supporting contracts.
25 Similarly, the per-line credits in the Settlement are offered for the same amount of time
26 Eschelon received those credits. Offering the 10% credit for 18 months would place other

CLECs in the same position as the CLECs who allegedly received a discount on Section 251(b) and (c) services, whereas offering the credit for longer than 18 months or on a prospective basis would place other CLECs in a better position than Eschelon and McLeod for these services, because McLeod and Eschelon are unable to receive such credits. Any allegations of discrimination cannot be cured with discrimination.

Q. AT&T SUGGESTS THAT QWEST HAS OVERESTIMATED THE MINIMUM AND MAXIMUM AMOUNT OF CLEC CREDITS TO BE ISSUED. PLEASE COMMENT.

A. In footnote 5 of its testimony, AT&T states that the Settlement allocates between \$8,100,000 and \$8,900,000 to the discount credits, whereas in discovery Qwest stated that the value of a 10% credit was between \$6,000,000 and \$8,000,000. AT&T's characterization of the amount of the credits in the Settlement fails to recognize that any overestimation of the amount of the credits is a significant concession by Qwest rather than a benefit to Qwest. In fact, any overestimation of the amount of the credits in the Settlement gives CLECs a significant benefit by ensuring that the Settlement provides enough money to pay all eligible CLECs. An overestimation of the amounts of the credits also benefits the state of Arizona, because the Settlement provides that any difference between the actual amount paid to CLECs and \$8,100,000 will be paid to the State through Voluntary Contributions. Indeed, contrary to AT&T's suggestion, Qwest would have benefited from a lower estimation of the amount of the credits, rather than the higher estimation in the Settlement.

In addition, Paragraph 7 of the Settlement creates a reporting requirement and allows Staff the option of auditing the provision of these credits, should any question or problem arise. The Settlement establishes a specific minimum amount of credits that Qwest must pay in

each credit category.

Q. DO YOU AGREE WITH ARIZONA DIALTONE'S SUGGESTION THAT THE CAPS PLACED ON THE TOTAL AMOUNT OF EACH OF THE CLEC CREDITS BE ELIMINATED?

A. No. First, I'd like to respond to Arizona Dialtone's comment that Qwest's projections of the amounts of the credits "are nowhere to be found" in the record. As AT&T pointed out, Qwest calculated the amount of the 10% credit in Section 3 of the Settlement and provided that information in response to a discovery request from AT&T. That discovery response is attached as Exhibit DZ-3 to my testimony. Second, as I discussed above, the amount of the 10% credit in the Settlement is an overestimate. Therefore, Arizona Dialtone's concerns that the caps will prevent CLECs from recovering credits is unwarranted. Finally, the caps serve the legitimate purpose of clarifying the extent of Qwest's concessions and obligations under the Settlement.

Q. SEVERAL CLECS HAVE SUGGESTED THAT THE CREDITS UNDER PARAGRAPHS 3, 4, AND 5 OF THE AGREEMENT SHOULD BE PAID TO THE CLECS IN THE FORM OF CASH RATHER THAN CREDITS ON THEIR PRESENT OR FUTURE BILLS. WHAT IS YOUR RESPONSE TO THAT SUGGESTION?

A. Bill credits are a regularly used form of payment between carriers to customers. For example, Section ^{11.2 DZ} 10 of the Arizona QPAP provides that tier one payments that are made to the CLECs are paid in the form of bill credits. Further, bill credits are the standard form of payment in the industry when an ongoing relationship exists between carriers, and remains the lowest costs, most efficient means of providing a refund. The only circumstances where a cash payment is appropriate instead of a bill credit is where the

1 carrier no longer does business with Qwest and has no bill to credit.

2
3 **Q. HOW DO YOU RESPOND TO TIME WARNER'S CONTENTION THAT CLECS**
4 **SHOULD RECEIVE INTEREST FOR CREDITS OR DISCOUNTS RECEIVED**
5 **UNDER THE PROPOSED SETTLEMENT?**

6 **A.** I disagree. This is a matter more appropriately reserved for legal briefing, but it is
7 Qwest's position that providing interest for credits or discounts received under the
8 Settlement is similar to prejudgment interest in the litigation context, which is rarely
9 awarded under Arizona law.

10
11 **Q. MTI STATES THAT THE SETTLEMENT WOULD NOT COMPENSATE MTI**
12 **FOR ITS LOSS OF MCLEOD AS A CUSTOMER. IS THIS A REASON TO**
13 **REJECT THE SETTLEMENT?**

14 **A.** No. MTI states that at one time it sold services to McLeod and subsequently lost McLeod
15 as a customer. MTI's competition with Qwest in the *wholesale* market for wholesale
16 customers such as McLeod has nothing to do with the allegations in the 252(e) Unfiled
17 Agreements proceedings that Qwest was not offering the same provisions to CLECs in
18 addition to McLeod.

19
20 **VIII. SCOPE OF THE RELEASE**

21 **Q. IN ORDER TO RECEIVE THE CREDITS UNDER THE SETTLEMENT, CLECS**
22 **ARE REQUIRED TO EXECUTE A RELEASE OF CERTAIN CLAIMS. WOULD**
23 **CLECS BE REQUIRED TO RELEASE CLAIMS REGARDING INTERSTATE**
24 **SERVICE?**

25 **A.** No. The Settlement states that in order to receive the credits, a CLEC must execute a
26 "release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents

1 against Qwest, arising out of any of the agreements, acts, or omissions at issue in Docket
2 Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket)." The docket
3 numbers are the numbers for the 252(e) Unfiled Agreements proceeding. Only issues
4 regarding intrastate services that begin and terminate in Arizona would be subject to the
5 release.

6
7 **Q. CAN YOU FURTHER CLARIFY THE SCOPE OF THE RELEASE IN**
8 **RESPONSE TO CLECS' CONCERNS?**

9 A. In many cases, the CLECs' comments about the scope of the release are merely a
10 restatement of their comments about the credits that they receive under Paragraphs 3 and 5
11 of the Agreement. I have already responded to those arguments previously.

12
13 The Settlement does not require the CLECs to release any claims unrelated to the issues in
14 the 252(e) Unfiled Agreements Docket and the 271 Subdocket. The release also does not
15 require the CLECs to release any claims they may have relating to the purchase of
16 interstate services. As a particular example, Arizona Dialtone may sign a release, accept
17 credits, and still raise claims it may have under its interconnection agreement with respect
18 to untimely conversion of unbundled network elements. And as another example, if a
19 CLEC signs the release and accepts the credits, it cannot assert any claims based on the
20 alleged agreements between Qwest, Eschelon, and McLeod.

21
22 **Q. IS REQUIRING CLECS TO EXECUTE A RELEASE IN EXCHANGE FOR THE**
23 **CREDITS A REASONABLE REQUIREMENT?**

24 A. It is. First, I would like to point out that CLECs are free not to sign the release, not
25 receive the credits under the Settlement, and pursue their own claims independently.
26 Accordingly, CLECs that believe the release is too broad are not obligated to execute it.

1
2 That said, the terms of the release are a reasonable compromise. Qwest is relinquishing a
3 number of defenses by offering the credits in the Settlement. Most prominently, Qwest is
4 offering the credits without requiring that requesting CLECs be in a similar position and
5 assume the same obligations as the CLEC did under the subject Agreement. Qwest is also
6 offering the \$2 per line credit for compensation for intraLATA toll despite Qwest's
7 position that intraLATA toll is not a Section 251(b) or (c) service, is outside the types of
8 provisions that would require filing under Section 252(e), and is outside the scope of
9 CLECs' opt-in rights under Section 252(i). The credits represent a compromise and
10 significant concessions by Qwest, and the release requirement is a reasonable restriction.
11
12

13 **Q. PLEASE ADDRESS AT&T'S "CONCERNS" WITH THE SETTLEMENT'S**
14 **PROVISION FOR THE DISMISSAL OF LITIGATION APPEARING ON PAGE**
15 **22 OF ITS TESTIMONY.**

16 **A.** On its face, the Settlement only terminates litigation between Staff and Qwest. The plain
17 terms of the Settlement permit CLECs the option of voluntarily receiving the benefits of
18 the Settlement in exchange for a release, or rejecting the CLEC credits provided for in the
19 Settlement and pursuing their own claims.
20
21
22

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///

///

23

24

25

26

1 IX. IMPLEMENTATION OF WHOLESALE RATES

2 Q. AT&T CRITICIZES THE COMPROMISE REACHED BETWEEN STAFF AND
3 QWEST ON THE PERIOD ALLOWED FOR THE IMPLEMENTATION OF
4 WHOLESALE RATE CHANGES. WOULD YOU PLEASE RESPOND TO THIS
5 COMMENT?

6 A. The provision AT&T criticizes represents a reasonable settlement between Staff's position
7 and Qwest's position. In the OSC docket, Staff recommended that Qwest be required to
8 implement wholesale rates within 30 days of entry of a Commission order. Qwest argued
9 that a reasonable period for implementation of wholesale rates was 90 days. In the
10 Settlement, Staff and Qwest compromised on a deadline of 60 days after the entry of a
11 Commission order fixing specific, numeric rates to be implemented.

12
13 AT&T criticizes this compromise on two grounds. First, AT&T contends that the
14 Settlement does not provide parity between the implementation of wholesale rates and
15 retail rates. This issue was discussed at length in the OSC hearing, and Qwest's position
16 is that there is no parity requirement under the Act for the reasons set forth in its closing
17 brief. Second, AT&T complains that Staff moved off its litigation position of 30 days.
18 From Qwest's view, it represents a reasonable settlement between the litigation positions
19 of the two parties.

20 CONCLUSION

21 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

22 A. Yes.
23
24
25
26

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, CHAIRMAN

JIM IRVIN

WILLIAM A. MUNDELL

JEFF HATCH-MILLER

MIKE GLEASON

IN THE MATTER OF)
QWEST CORPORATION'S)
COMPLIANCE WITH SECTION 252(e) OF)
THE TELECOMMUNICATIONS ACT OF 1996)

DOCKET NO. RT-00000F-02-0271

IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S)
COMPLIANCE WITH SECTION 271 OF)
THE COMMUNICATIONS ACT OF 1996)

DOCKET NO T-00000A-97-0238

ARIZONA CORPORATION COMMISSION)
Complainant,)
V)
QWEST CORPORATION,)
Respondent.)

DOCKET NO. T-01051B-02-0871

STATE OF ARIZONA)
COUNTY OF MARICOPA)

AFFIDAVIT OF
DAVID ZIEGLER

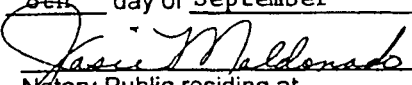
David Ziegler, of lawful age being first duly sworn, deposes and states:

1. My name is David Ziegler. I am Assistant Vice President – Arizona Public Policy. I have caused to be filed written rebuttal testimony in support of Qwest Corporation in Docket No. RT-00000F-02-0271/T-00000A-97-0238/T-01051B-02-0871.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.


David Ziegler

SUBSCRIBED AND SWORN to before me this 8th day of September, 2003.


Notary Public residing at
Phoenix, Arizona

My Commission Expires: 9/18/04



EXHIBIT

DZ-2

DWYER, THERESA

From: Maureen Scott [MScott@CC.STATE.AZ.US]
Sent: Thursday, July 03, 2003 2:52 PM
To: rwolters@att.com; dpozefsky@azruco.com; hpliskin@covad.com; klclauson@eschelon.com; DWYER, THERESA; thc@lrlaw.com; dconn@mcleodusa.com; mpatten@rhd-law.com; thomas.f.dixon@wcom.com
Cc: CKempley@CC.STATE.AZ.US; EGJ@CC.STATE.AZ.US; EOA@CC.STATE.AZ.US; BERG, TIM; acrain@qwest.com
Subject: Principles of Settlement - Qwest Enforcement Dockets



SETTLE~1.DOC Maureen Scott.vcf

The Staff of the Arizona Corporation Commission and Qwest Corporation are providing you with the attached summary of points of 'Settlement Proposal for 252(e) Unfiled Agreements, 271 Subdocket, Wholesale Cost Implementation Order to Show Cause, and Withdarwal of Cost Docket Appeal. Pursuant to Rule 408 of the Arizona Rules of Evidence, any use of this document or the information contained in it is subject to the restrictions and limitations set forth in that Rule. This summary reflects the general subjects of the deal points between Staff and Qwest. Those deal points may continue to evolve, and to be revised and refined, in the process of further negotiations and documentation of the settlement. Please provide any comments you have on the points set forth in the Attachment to Maureen Scott by 5:00 pm on Tuesday, July 8, 2003.

Maureen A. Scott
Attorney, Legal Division
Arizona Corporation Commission
(602) 542-6022 Telephone
(602) 542-4870 Facsimile
maureenscott@cc.state.az.us

Settlement Proposal for 252 (e) Unfiled Agreements, 271 Subdocket, Wholesale Cost Implementation Order to Show Cause, and Withdrawal of Cost Docket Appeal

1.	252 (e) /271 Subdocket (Eschelon and McLeod agreements	\$5M
	252 (e) failure to file other agreements	\$0.047M
	Order to Show Cause Cost Docket Implementation	\$0.150M
	Subtotal	\$5.197M
2.	Voluntary Contribution	\$6M
	• Education	
	• Economic Development	
	• Infrastructure Investment	
3.	Issuance of credits off of future purchases equaling 10% of actual purchases of Section 251(b) and (c) services for the period of 1/01/01 – 6/30/02.	
		\$8.1M (Min)
		\$8.91M (Max)
4.	Credit of \$2 per month per CLEC access line, offset by actual CLEC collections from Qwest for terminating intraLATA traffic for eight months (July, 2001 through February, 2002). CLECs must provide documentation showing collections.	
		\$.6 M (Min)
		\$.66M (Max)
5.	Credit of \$13 for eight months from November, 2000 through June, 2001, and \$16 per month for eight months from July, 2001 through February, 2002 per UNE –P purchase, offset by actual CLEC per line billings to IXC's for switched access. CLECs must provide documentation showing billings to IXC's.	
		\$.5M (Min)
		\$.55M (Max)
6.	Withdraw Federal lawsuit regarding wholesale cost docket	
	TOTAL	\$20.397M (Min)
		\$21.317M (Max)

Any amounts less than the minimum in #3-5 will be added to #2. Amounts for #3-5 are capped at the maximum amount. If a CLEC determines not to receive credits through this plan, then amounts attributable to such CLECs are deducted from the amounts. CLECs receiving credits shall execute release of claims.

Communication For Purposes of Settlement Under Rule 408 of Arizona Rules of Evidence

7. Independent monitor of Qwest's Section 252(e) compliance
 - Hire and pay for an independent auditor to monitor the work of Qwest's Agreement Review Committee annually for the less of either a three year period or the ACC authorizes termination of auditor.
8. Continue the existing Qwest 252 compliance training for a period of three years.
9. Implement and abide by the 252 related assurances contained in Qwest's December 23, 2002, filing.
10. Develop systems enabling wholesale rate implementation within [to be negotiated] days of ACC decision.
11. Hire and pay for independent consultant monitor of Qwest's implementation process for wholesale rates.
12. CLECs can opt into non-monetary provisions pertaining to Section 251 services for the 28 agreements at issue, even terminated agreements and provisions, if the CLECs qualify by agreeing to all related terms under the requisites of Section 252(i).
13. Qwest agrees to address in a settlement stipulation that the company should have promptly and explicitly informed the ACC and its staff of the timeframes associated with the implementation of phase II Order wholesales rates changes and agrees to promptly provide such information on all future occasions, including requesting a waiver as appropriate.
14. Modified its Communications process for CLEC to require correspondence to all wholesale customers at critical process points. This will include the following:
 - Immediately after the issuance of a final Commission Order
 - Immediately after a rate sheets are updated
 - Immediately prior to the introduction of new Commission approved rates to wholesale customers bill.
15. Continue the Qwest Cost Docket Governance team already established by Qwest for a three year period.

EXHIBIT

DZ-3

Arizona
RT-00000F-02-0271
ATT/TCG 05-001

INTERVENOR: AT&T Communications of the Mountain States, Inc. and TCG
Phoenix

REQUEST NO: 001

In the Settlement Agreement a minimum of \$8,100,000 and a maximum of \$8,900,000 is allocated to the discount credits for Eligible CLECs for Section 251(b) and (c) services.

a. Disregarding the maximum allocation provided for in the Settlement Agreement, provided for in the Settlement Agreement, provide the maximum amount Qwest would have to pay in discount credits to all Eligible CLECs for the period of January 1, 2001, through June 30, 2002, if Section 3 Discount Credits includes only Section 251 (b) and (c) services.

b. Disregarding the maximum allocation provided for in the Settlement Agreement, provide the maximum amount Qwest would have to pay in discount credits to all Eligible CLECs for the period of January 1, 2001, through June 30, 2002, if Section 3 Discount Credits includes Section 251(b) and (c) services and all intrastate services purchased by Eligible CLECs.

c. Disregarding the maximum allocation provided for in the Settlement Agreement, provide the maximum amount Qwest would have to pay in discount credits to all Eligible CLECs for the period of January 1, 2001, through June 30, 2002, if Section 3 Discount Credits includes Section 251(b) and (c) services and all intrastate services and all interstate services purchased by Eligible CLECs.

RESPONSE:

1.a If Section 3 Discount Credits include only Section 251 (b) and (c) services, Qwest estimates the payment to eligible CLECs to be between \$6M and \$8M.

1.b If Section 3 Discount Credits include only Section 251 (b) and (c) services and all Intrastate services, Qwest estimates the payment to eligible CLECs to be between \$12M and \$14M.

1.c Qwest objects on the grounds that this request is not reasonably calculated to lead to discovery of admissible evidence because the requested information pertains to services outside the jurisdictional scope of the Arizona Corporation Commission.

Qwest is continuing its efforts to refine these figures further.

Respondent: Arturo Ibarra

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, CHAIRMAN

JIM IRVIN

WILLIAM A. MUNDELL

JEFF HATCH-MILLER

MIKE GLEASON

IN THE MATTER OF)
QWEST CORPORATION'S)
COMPLIANCE WITH SECTION 252(e) OF)
THE TELECOMMUNICATIONS ACT OF 1996)

DOCKET NO. RT-00000F-02-0271

IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S)
COMPLIANCE WITH SECTION 271 OF)
THE COMMUNICATIONS ACT OF 1996)

DOCKET NO T-00000A-97-0238

ARIZONA CORPORATION COMMISSION)
Complainant,)
V)
QWEST CORPORATION,)
Respondent.)

DOCKET NO. T-01051B-02-0871

STATE OF ARIZONA)
COUNTY OF MARICOPA)

AFFIDAVIT OF
DAVID ZIEGLER

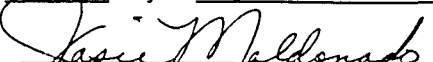
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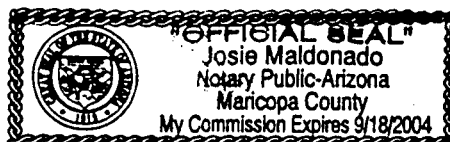
Further affiant sayeth not.


David Ziegler

SUBSCRIBED AND SWORN to before me this 8th day of September, 2003.


Notary Public residing at
Phoenix, Arizona

My Commission Expires: 9/18/04



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

Arizona Corporation Commission

DOCKETED

SEP 22 2003

DOCKETED BY	CAW
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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF
1996

DOCKET NO. T-00000A-97-0238

IN THE MATTER OF QWEST
CORPORATION'S COMPLIANCE
WITH SECTION 252(e) OF THE
TELECOMMUNICATIONS ACT OF
1996

DOCKET NO. RT-00000F-02-0271

ARIZONA CORPORATION
COMMISSION

DOCKET NO. T-01051B-02-0871

Complainant.

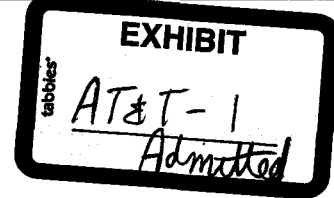
v.

QWEST CORPORATION

Respondent.

TESTIMONY OF
THOMAS C. PELTO
ON BEHALF OF
AT&T COMMUNICATIONS
OF THE MOUNTAIN STATES, INC.

AUGUST 29, 2003



1 **I. OVERVIEW AND BACKGROUND**

2 **Q. PLEASE STATE YOUR NAME AND POSITION.**

3 A. My name is Thomas C. Peltó. I am testifying on behalf of AT&T
4 Communications of the Mountain States, Inc. and TCG Phoenix. I serve as
5 AT&T's Law and Government Affairs Vice President for the Western Region.

6 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

7 A. I received a Bachelor of Business Administration degree from the University of
8 Michigan. In 1988, I received a Juris Doctor, with high honors, from the
9 University of Texas Law School.

10 **Q. PLEASE STATE YOUR RESPONSIBILITIES AT AT&T.**

11 A. I am responsible for the development and implementation of policy with regard to
12 AT&T's activities in the 14-state Qwest region and 5 SBC states. I have held this
13 position since 1997. Previously, I worked as AT&T's Chief Regulatory Counsel
14 for the Southwest Region.

15 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 A. My testimony addresses the Settlement Agreement entered into and filed jointly
17 by the Staff of the Arizona Corporation Commission ("Staff") and Qwest
18 Corporation ("Qwest"). I identify the serious flaws inherent in the Agreement

1 and explain why the Commission should reject the Agreement. I also respond to
2 the direct testimonies filed by Qwest and Staff in support of the Settlement
3 Agreement.

4 **Q. BRIEFLY SUMMARIZE YOUR TESTIMONY.**

5 A. It is my recommendation that the proposed Settlement Agreement be rejected.

6 The Settlement Agreement is intended to resolve 2 proceedings and a sub-docket
7 in another proceeding.¹ Instead, the cases should be resolved on the merits, based
8 on the existing record in those matters.

9 In each of these proceedings – the Section 252(e) proceeding, the Show Cause
10 proceeding and the Section 271 sub-docket – Staff found that Qwest had acted
11 inappropriately or unlawfully and, in some cases, did so willfully. Staff's
12 findings and conclusions demonstrate that Qwest's actions caused harm to
13 competition and CLECs. After reviewing the Settlement Agreement it is readily
14 apparent that the Agreement is not structured in a manner that will remedy the
15 harm to competition and the CLECs.

¹ Docket No. RT-00000F-02-0271 is a docket initiated by the Commission to review Qwest's compliance within Section 252(e) of the Telecommunications Act of 1996 ("Act"). The docket was initiated by the Commission at the request of Staff after Staff became aware of agreements that Qwest had with certain competitive local exchange carriers ("CLECs") that had not been filed with the Commission for approval pursuant to Section 252(e) of the Act. Docket No. T-01051B-02-0871 was initiated by the Commission at the request of Staff after Staff became aware in October 2002 that Qwest had not implemented the Commission's June 12, 2002, order in the Wholesale Cost Case (Decision No. 64922). Staff also determined that Qwest's processes for implementing wholesale rate changes were unreasonable and discriminatory. Docket No. T-00000A-97-0238 was initiated by the Commission to evaluate Qwest's Compliance with Section 271 of the Act. My understanding is the Settlement Agreement only resolves the 271 sub-docket, which was intended to resolve the question whether terms contained in certain agreements between Qwest and CLECs that prohibited certain CLECs from participating in the Section 271 docket may have interfered with the Section 271 regulatory process.

1 CLECs were not invited to participate in the settlement discussions from the
2 onset. By the time a few of the CLECs were allowed to comment, Qwest's and
3 Staff's positions had already hardened through the negotiation process, which
4 prevented any flexibility to incorporate suggestions made by the CLECs.
5 Therefore, it is not surprising that not a single CLEC is a party to the agreement.
6 Essentially, the Settlement Agreement is flawed because it fails to focus on
7 adequately addressing the harm to competition and the CLECs. The Commission
8 should reject the Settlement Agreement and address and resolve each of the
9 proceedings based on the evidence and fashion a remedy designed to remedy
10 Qwest's discriminatory conduct.

11 This was a crime on competition perpetrated by the use of secret agreements with
12 select competitors. The Settlement Agreements is the product of – ironically –
13 secret negotiations between Staff and Qwest. Consequently, it bears little relation
14 to the harm caused and does even less to remedy the underlying discrimination.

15 Finally, however, I would stress that AT&T's criticisms are limited to the
16 settlement process and the Settlement Agreement and are not related to the fine
17 work Staff did in each of the proceedings.

18 **II. SETTLEMENT AGREEMENT**

19 **Q. WHAT DOCUMENTS DID YOU REVIEW IN ADDITION TO THE**
20 **SETTLEMENT AGREEMENT?**

21 **A.** I reviewed the following documents:

1. Memorandum dated November 26, 2002, from the Utilities Division to the Commission regarding Qwest Corporation – Failure to Implement Wholesale Rate Changes Ordered in Decision No. 64922 (Docket No. T-01051B-02-0871)
2. Direct Testimony of Matthew J. Rowell dated April 17, 2003, on behalf of Staff in Docket No. T-01051B-02-0871 (“Rowell Direct”).
3. Staff’s Closing Brief dated July 15, 2003, in Docket No. T-01051B-02-0871.
4. Direct Testimony of Marta Kalleberg dated February 21, 2003, in Docket No. RT-00000F-02-0271 (“Kalleberg Direct”).
5. Staff’s Initial Post-Hearing Brief dated May 1, 2003, in Docket No. RT-00000F-02-0271.
6. Staff’s Reply Brief dated May 15, 2003, in Docket No. RT-00000F-02-0271.
7. Section 271 Sub-Docket – Staff Report and Recommendation dated May 6, 2003, in Docket No. T-00000A-97-0238 (“Staff Report”).
8. AT&T’s Response to Settlement Agreement Filed Jointly by Qwest and Staff July 25, 2003 (“AT&T’s Response”).

I also reviewed portions of other documents referred to in my testimony.

Q. YOUR LIST IS GENERALLY LIMITED TO STAFF FILINGS. IS THERE A REASON FOR THIS?

A. Yes. Time did not allow me to review the entire record of all 3 cases. The record is simply too voluminous. I evaluated the reasonableness of the Settlement Agreement by comparing the terms of the Settlement Agreement to Staff’s findings and conclusions contained in Staff’s original recommendations, testimony and briefs. These documents are based on Staff’s independent review of the evidence. Therefore, they should provide an objective measuring stick for

1 determining whether the Settlement Agreement is fair, reasonable, in the public
2 interest and supported by the evidence.

3 **Q. PLEASE IDENTIFY THE SIGNATORIES TO THE SETTLEMENT**
4 **AGREEMENT.**

5 A. Qwest and Staff.

6 **Q. WHY IS THAT SIGNIFICANT?**

7 A. The principles embodied in the Agreement reflect the negotiations of only these
8 two parties. Since the CLECs were essentially excluded from these negotiations,
9 the Settlement Agreement does not, and cannot, adequately reflect the positions,
10 priorities and principles the CLECs necessarily would want to see. This
11 difference in priorities can be readily seen in the section on voluntary
12 contributions contained in the Settlement Agreement. This provision provides no
13 benefit to CLECs. I cannot imagine any CLEC proposing such a provision. On
14 the other hand, the discount credits, which are of greater importance to CLECs,
15 are provided on only a subset of the services Eschelon and McLeod received the
16 discounts on and prospective discounts were eliminated entirely. Had the CLECs
17 been involved or been given a meaningful opportunity to provide input, the
18 Settlement Agreement would have reflected different priorities and allocations of
19 the monetary values. Considering the nature of the cases and the underlying
20 Qwest conduct, I do not believe it is appropriate at this stage to terminate the
21 cases on the terms nor in the manner proposed by Qwest and Staff.

1 **Q. PLEASE IDENTIFY THE TERMS OF THE SETTLEMENT**
2 **AGREEMENT THAT YOU BELIEVE THE COMMISSION TO PAY**
3 **PARTICULAR ATTENTION TO?**

4 A. The terms that I believe the Commission needs to seriously review are: 1) Cash
5 Payments; 2) Voluntary Contributions; 3) Discount Credits; 4) Access Line
6 Credits; 5) UNE-P Credits; 6) Additional Voluntary Contributions; 7) Opt-in for
7 Eligible CLECs; 8) Wholesale Rate Implementation; 9) Dismissal of Litigation;
8 and 10) Compromise. The Commission also should review the Release of All
9 Claims. The release was not filed by Qwest and Staff but it is an integral part of
10 the Settlement Agreement.

11 **A. CASH PAYMENTS**

12 **Q. PLEASE DESCRIBE THE CASH PAYMENT TERMS.**

13 A. Paragraph 1 identifies the level of penalties or fines payable by Qwest to the State
14 of Arizona, although the Agreement is careful to avoid the use of these words,
15 instead preferring the phrase "Cash Payment." The total amount is \$5,197,000.
16 This is comprised of \$5,000,000 for the Section 252(e) proceeding and the
17 Section 271 sub-docket, an additional \$47,000 for the Section 252(e) proceeding,
18 and \$150,000 for the Show Cause proceeding.

19 **Q. WHAT CONCERNS, IF ANY, DO YOU HAVE WITH THE "CASH**
20 **PAYMENT" TERMS?**

21 A. The payments are simply inadequate to amount to a serious penalty. Staff
22 testified that the Commission can levy maximum penalties of \$44,500,000 for the

1 Section 252(e) case, \$7,415,000 for the Section 271 Sub-docket, and \$1,260,000
2 for the Show Cause case, a sum of \$53,125,000. The Settlement Agreement
3 represents less than 10% of the maximum penalties Staff identified and 75% less
4 than what Staff initially recommended. Given the serious violations, and the
5 effort by Qwest to essentially cheat its way into long distance, this amount is
6 simply insufficient.

7 **Q. DO YOU BELIEVE HIGHER PENALTIES ARE WARRANTED?**

8 A. Yes, and so did Staff up until a few months ago. Staff recommended penalties of
9 \$15,047,000 in the Section 252(e) case, \$7,415,000 in the Section 271 Sub-docket
10 and \$189,000 in the Show Cause proceeding, for total penalties in the amount of
11 \$22,651,000.

12 **Q. WHAT DID THE EVIDENCE SHOW?**

13 A. As I stated earlier, I limited my review to Staff's testimony. But among other
14 things, Staff's made the following findings:

15 **1. Section 252(e) Proceeding**

16 In the Section 252(e) proceeding, Staff concluded that:

17 (a) Qwest failed to comply with the following statutes and regulations: 47
18 U.S.C. § 252(e), Ariz. Adm. Code R14-2-1112, R14-2-1307, R14-2-1308, R14-2-
19 1506 and R14-2-1508 (Kalleberg Direct at 2);

1 (b) "The decision to enter into a unique and discriminatory relationship with
2 Eschelon was an intentional and willful decision by Qwest" (*Id.* at 23);

3 (c) "The relationship between McLeod, U S WEST and later, Qwest, was
4 unique and discriminated against other CLECs who could not view and possibly
5 opt-in to the agreements between the parties since they were not publicly filed"
6 (*Id.* at 35);

7 (d) "The decision to enter into a unique and discriminatory relationship with
8 McLeod was an intentional and willful decision by Qwest" (*Id.* at 39);

9 (e) "Staff has determined that with regard to the Eschelon and McLeod
10 agreements and non-participation clauses contained in unfiled agreements,
11 Qwest's actions were intentional, willful, and contrary to Commission rule and
12 processes" (*Id.* at 76);

13 (f) "The signal must be sent that Qwest's actions are highly egregious and
14 unacceptable and the negative impact of these actions must be remedied" (*Id.*).

15 **2. Section 271 Sub-Docket**

16 In the Section 271 sub-docket Staff found and concluded that:

17 (a) "Information gathered by Staff shows that Qwest attempted to silence two
18 of its largest wholesale competitors, among others, during critical timeframes of
19 the Commission proceedings" (Section 271 sub-docket – Staff Report and
20 Recommendation (May 6, 2003) at 2);

1 (b) "Qwest used the [Eschelon] agreement on several occasions to keep
2 Eschelon from appearing in Section 271 workshops and Change Management
3 Process ('CMP') proceedings where it would have brought issues to the
4 Commission's attention which would have entered into the Commission's
5 ultimate determination as to whether Qwest met certain Section 271 checklist
6 requirements" (*Id.*);

7 (c) "The evidence shows that Qwest intentionally prevented the carriers from
8 raising issues that would have reflected adversely on Qwest's compliance with
9 Section 271 requirements. These actions by Qwest could have disadvantaged
10 competitors, and interfered with the integrity of the Commission's processes." *Id.*
11 at 3.

12 **3. Show Cause Proceeding**

13 In the Show Cause proceeding, the Staff concluded that:

14 (a) "six months is clearly an excessive and unreasonable amount of time for
15 the implementation of the wholesale rates ordered by Decision No. 64922"
16 (Rowell Direct at 8);

17 (b) "the five-month average indicates that Qwest's wholesale rate change
18 system as a whole is unreasonably slow and inefficient" (*Id.*, at 9);

19 (c) "Implementing the wholesale rates for states that had pending 271
20 applications ahead of the Arizona rates would have been the result of a conscious
21 decision on the part of Qwest's management" (*Id.*, at 11);

(d) "in spite of the Commission's order to implement the Arizona rates immediately, Qwest diverted resources to the implementation of rates for the nine states listed in Table 2" (*Id.*, at 15).

These statements justify Staff's initial recommendation and provide absolutely no basis to reduce Staff's initial recommendation by 75%. As noted by Staff, "[t]he signal must be sent that Qwest's actions are highly egregious and unacceptable... (Kalleberg Direct at 76.). \$5,197,000 is essentially a slap on the wrist for Qwest and will not alter the incentives that caused Qwest to make what amounted to a business decision to break the law, and commit what amounted to a \$10 billion fraud on competition and state commissions.²

B. VOLUNTARY CONTRIBUTIONS

Q. BRIEFLY DESCRIBE THE VOLUNTARY CONTRIBUTION SECTION OF THE AGREEMENT.

A. Qwest has agreed to spend a minimum of \$6,000,000 on "voluntary contributions." Voluntary contributions is comprised of:

1. Section 501(c)(3) organizations or other State-funded programs involved in the areas of education and/or economic development;
2. Educational programs designed to promote greater understanding of telecommunications issue by Arizona consumers; and
3. infrastructure investment, including investments in unserved and underserved areas in Arizona.

² Qwest previously estimated the in-region long distance market at \$10 billion, and recently reaffirmed that valuation.

1 The section goes on to outline how the money will be allocated and spent.

2 **Q. WHAT CONCERNS DO YOU HAVE WITH THE SECTION ON**
3 **VOLUTARY CONTRIBUTIONS?**

4 A. Simply put, this section creates a \$6 million slush fund and converts what should
5 be penalties into a public relations vehicle for Qwest. Indeed, there is nothing in
6 this section that provides any assurance that Qwest wasn't going to spend the \$6
7 million in exactly the same fashion, with or without the settlement. To the extent
8 any of this amount is incremental, it still has no proper place in a settlement of
9 any of the dockets and bears no logical connection to any of the underlying
10 violations.

11 Section 501(c)(3) organizations are commonly known as charities. This means
12 Qwest can give a charitable contribution, take credit publicly and more than likely
13 take a tax deduction. Charitable contributions cannot be confused with penalties,
14 especially since there is no mechanism that prevents Qwest from getting credit for
15 charitable contributions that it would have made in any event, in the ordinary
16 course of business. If Qwest believes certain charities should receive a Company
17 contribution Qwest should do so on the merits, not as a part of a settlement for
18 flagrantly unlawful behavior.

19 The educations programs are not defined and could conceivably encompass
20 Qwest marketing or quasi-marketing in the guise of education. For example,
21 there is no parameters around branding of the so-called "education" programs.
22 Moreover, there is again no logical connection to the underlying offenses.

1 Qwest also gets credit for making infrastructure investments. Several examples of
2 infrastructure investment are provided. Underserved and unserved areas are
3 permissible investment categories under the terms of the Agreement but have
4 absolutely no connection with the proceedings. Furthermore, any investment
5 Qwest does make in these areas will be ultimately owned and operated by Qwest
6 and permit the Company to offer revenue producing services to customers who
7 will have no idea Qwest agreed to make the investment because it got caught
8 willfully breaking the law. The Commission should address the issues and merits
9 of serving the underserved and unserved areas in a separate unrelated proceeding.

10 The Agreement allows for investment in route diversity for homeland security and
11 911 services. The State of Arizona already has a 911 Fund from which Qwest
12 recovers all its investment. If a 911 expenditure is necessary, the Fund should
13 reimburse Qwest for it. All corporations, including AT&T, are spending huge
14 sums for homeland security as a cost of doing business. There is no reason to
15 give Qwest credit for these expenditures.

16 The Agreement allows for investment in advanced services. This provision is
17 extremely galling for CLECs. The Federal Communications Commission has
18 ruled that CLECs will not have access to Qwest's investment in broadband
19 services on a resale or wholesale basis.³ Thus, Qwest is permitted to invest in

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications*

1 facilities that CLECs will be precluded from using as a remedy for discrimination
2 against CLECs. That is completely counterintuitive.

3 Likely for some of those same reasons, Staff's witness had previously rejected
4 broadband deployment as a remedy: "The focus of this docket is on competition,
5 rather than on infrastructure." Kelleberg Direct at 95. Staff's reasoning is equally
6 applicable to all the infrastructure investment contained in the Agreement.

7 In sum, the whole section on "voluntary contributions" inappropriately reduces
8 penalties payable to the State, improperly inflates the monetary value of the
9 settlement, benefits Qwest, disadvantages CLECs, and reduces the amount
10 available to remedy the harm to competition and the CLECs. Moreover, there is
11 no assurance that any of these amounts are incremental and it is certain that some
12 of the expenditures would have occurred anyway. Thus, the "voluntary
13 contributions" provisions should be rejected in their entirety by the Commission.

14 **C. DISCOUNT CREDITS**

15 **Q. BRIEFLY DESCRIBE THE DISCOUNT CREDIT TERMS.**

16 A. Qwest agrees to give all CLECs, except Eschelon and McLeod, a one-time credit
17 off of future purchases equal to 10% of the total of Section 251(b) and (c) services
18 purchased by the CLECs between January 1, 2001, through June 30, 2002. To

Capability, CC Docket No. 98-147; Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003), ¶¶ 272-297.

1 obtain the Discount Credit, the CLEC will have to release all claims against
2 Qwest arising out of the issues raised in the three proceedings.

3 **Q. WHAT CONCERNS, IF ANY, DO YOU HAVE WITH THE DISCOUNT**
4 **CREDIT TERMS"**

5 A. Fundamentally, competitive restitution should be the center piece of any
6 settlement or order resolving these dockets. Qwest granted unlawful discounts to
7 handpicked competitors for its own benefit, in part to buy their silence and
8 suppress damaging information in the Section 271 proceeding. That
9 discrimination must be remedied, but the Settlement Agreement falls far short.

10 First, the 10% discount credit in the Settlement Agreement is limited to
11 Section 251(b) and (c) services. As Staff pointed out, both Eschelon and McLeod
12 received a 10% discount on *all the carriers' purchases* from Qwest, not simply
13 Section 251(b) and (c) services. Staff's Initial Post-Hearing Brief at 16-17. In
14 Staff's initial testimony filed in the Section 252(e) case, Staff recommended that
15 CLECs (other than McLeod and Eschelon) receive a *cash* payment totaling 10%
16 of their Section 251(b) and (c) *and intrastate services* for the period January 1,
17 2001, through June 30, 200, in addition to a prospective discount of 10% on all
18 future purchases for a period of 18 months from the date of the order. Kalleberg
19 Direct at 90-91.

20 In Qwest's response to AT&T's Fifth Set of Data Requests, Qwest estimated that
21 payment to eligible CLECs for Section 251(b) and (c) services to be between \$6

1 and \$8 Million. If intrastate services are included, the amount of payments to
2 eligible CLECs would be between \$12 and \$14 Million.⁴ By omitting the
3 intrastate services, the value of the discounts to CLECs is thus reduced by \$6
4 million – coincidentally – the exact amount of the voluntary contributions.

5 By providing Eschelon and McLeod 10% discounts on tariffed intrastate services,
6 Qwest gave Eschelon and McLeod a preference that was not available to other
7 CLECs. This is discrimination. *A.R.S. § 40-334(A)* prohibits illegal preferences
8 and discrimination. By including intrastate services within the scope of the
9 discount credits, Staff could have remedied this State law violation. The apparent
10 decision to trade away the credit for these services, undoubtedly at Qwest's
11 insistence, leaves state law violations unremedied, to the benefit of Qwest and at
12 the expense of the CLECs.

13 Second, a 10% discount should apply *prospectively* on future purchases made by
14 CLECs as originally recommended by Staff. Eschelon and McLeod were able to
15 discuss and make their plans knowing they would receive a 10% discount on all
16 services going forward. Other CLECs should have the same opportunity. Staff
17 initially agreed: "It can be argued that these CLECs may have wanted to enter the
18 Arizona market for local service during that time period, but were unable to do so
19 due to high prices for wholesale services." Kalleberg Direct at 92.

⁴ The \$12 to 14 Million value attached by Qwest to the retroactive credits also provides a basis for estimating the value to CLECs of prospective credits on the same services for the same period of time.

1 By making the discount prospective, CLECs can act and plan on the availability
2 of the discounts and have the same forward-looking opportunity as Eschelon and
3 McLeod had. CLECs must purchase services from Qwest to provide competitive
4 services to customers. Although a one-time payment to the CLECs will benefit
5 the CLECs, a prospective discount will benefit the CLECs, Arizona consumers
6 and competition in general. It would encourage new competition on a prospective
7 basis. Staff's witness also acknowledged the benefit of prospective payments:
8 "By giving all carriers a 10 percent discount credit on a going forward basis for
9 18 months, CLECs who have not entered the Arizona market may now do so and
10 increased local competition may result." Kalleberg at 92.

11 **D. ACCESS LINE CREDITS AND UNE-P CREDITS**

12 **Q. DESCRIBE THE ACCESS LINE CREDIT TERMS.**

13 A. The Settlement Agreement provides for access line credits and UNE-P credits.
14 These two credits are based on provisions contained in Eschelon's agreements.
15 Eschelon received an access line credit of \$2 per month for each UNE-P line or
16 unbundled loop purchased by Eschelon. The purpose was to compensate
17 Eschelon for Qwest's intraLATA toll traffic terminating to customers served by
18 Eschelon's switch. Joint Ex.1, No. 5 at 2. The UNE-P credit was a \$13 per
19 month per UNE-P line credit, later raised to \$16 per month, to compensate
20 Eschelon for its inability to bill interexchange carriers for all switched access
21 because the records provided by Qwest to Eschelon were inadequate. Joint Ex. 1,

1 Nos. 4 and 5. The Settlement Agreement provides for maximum credits of
2 \$660,000 and \$550,000, for the access line credits and UNE-P credits,
3 respectively.

4 For the same reasons discussed in the section on discount credits, these two
5 credits should also be prospective. To the extent the credits are prospective, no
6 documentation would be required. The CLECs would simply receive the credits
7 on a per-line basis unless and until Qwest can prove that the problem is
8 completely fixed.

9 AT&T believes the facts behind these credits highlight the seriousness of Qwest's
10 conduct and confirm Staff's initial findings and conclusions. Qwest paid the
11 UNE-P credits because Eschelon was not receiving records from Qwest that
12 documented all the calls being made by Eschelon's customers. The provision of
13 call detail was and continues to be a Section 271 requirement.

14 The contracts with Eschelon go back to November 15, 2000. On December 21,
15 2001, Cap Gemini Telecom Media & Networks U.S., Inc. ("CGE&Y") issued its
16 Final Report of the Qwest OSS Test, Version 1.0. According to CGE&Y, there
17 was no problem with the adequacy of Qwest's DUF records. However, in early
18 2002 it was brought to the attention of CGE&Y that Qwest's provision of Daily
19 Usage Files ("DUF") was suspect. CGE&Y did additional testing in January
20 2002. Qwest initially flunked the test. *See* Incident Work Order 2129; Final

1 Report of Qwest OSS Test, Version 3.0 (May 3, 2002), §2.4.5. It took corrective
2 action and multiple retests for Qwest to pass.

3 If Eschelon's agreements had been filed, evidence of inadequate DUF records
4 would have surfaced in late 2000. For over two years Qwest's inability to provide
5 adequate DUF records went unquestioned even though the issue remained
6 unremedied.

7 The problem with Qwest's DUF records, the fact the Eschelon was silenced from
8 bringing the issue to the attention of the Commission, and the fact that the CLECs
9 were unaware of the incomplete DUF records during the period requires that the
10 remedy be prospective on a per-line basis to the extent the problem has not been
11 fixed. This goes to the core of the cover up and Qwest's intentional suppression
12 of this information also warrants imposing penalties far greater than those
13 contained in the Settlement Agreement. Qwest deliberately violated the law in an
14 attempt to accelerate its long distance reentry. Its scheme succeeded in every
15 state except Minnesota and Arizona. The Commission must ruin the business
16 case for breaking the law.

17 **E. ADDITIONAL VOLUNTARY CONTRIBUTIONS**

18 **Q. BRIEFLY DESCRIBE THE SECTION ON ADDITIONAL VOLUNTARY**
19 **CONTRIBUTIONS.**

20 **A.** As I mentioned previously, the paragraphs on discount credits, access line credits
21 and UNE-P credits have minimums and maximums associated with the credits.

1 To the extent Qwest does not make payments equal to the minimums, it must
2 allocate an amount equal to the difference between the amounts paid and the
3 minimums to the section on "voluntary contributions". Therefore, to the extent
4 that the Settlement Agreement represents payments to the CLECs, the
5 Commission must recognize there is no certainty the CLECs will actually receive
6 the amounts reflected in the Settlement Agreement and indeed creates the
7 incentive for Qwest to minimize competitive restitution payments so that it can
8 satisfy more of the obligations with funny money voluntary contributions.⁵

9 Every dollar that does not go to the CLECs indirectly goes back to Qwest by way
10 of this section, reduces the value of the settlement and increases the size of the
11 fund available to fund investments unrelated to the CLEC harm. If the discounts
12 are prospective, every dollar will be received by the CLECs.⁶

13 **F. OPT-IN FOR ELIGIBLE CLECS**

14 **Q. BRIEFLY DESCRIBE THE SECTION ON OPT-IN FOR ELIGIBLE**
15 **CLECS.**

16 **A.** The opt-in section allows eligible CLECs to opt-in to the non-monetary provision
17 of the agreements listed on Table 1 of Staff witness Kalleberg's testimony.

⁵ There is also some question about the values contained in the Settlement Agreement. The Settlement Agreement allocates \$8,100,000 to \$8,900,000 to the Discount Credits. However, in response to AT&T's Fifth Set of Data Requests, Qwest states that between \$6 and \$8 Million will be paid out under Discount Credits. Therefore, the minimum value of the Agreement is inflated by \$2 Million and the maximum by \$900,000. But more importantly, there is a higher likelihood based on the numbers in the data request that the minimum allocation will not be met, allowing Qwest to allocate more to voluntary contributions.

⁶ If the DUF problem has been fixed, any amount under the minimum should be paid, pro rata, as an additional discount credit to CLECs, rather than as additional voluntary contributions.

1 **Q. WHAT, IF ANY, CONCERNS DO YOU HAVE WITH THIS SECTION?**

2 A. The section contains the following condition: "In exercising such opt-in, however,
3 the CLEC must satisfy the criteria under Section 252(i), including but not limited
4 to, assuming any and all related terms in the agreement it chooses." Although the
5 language attempts to track the Act and FCC qualifications, this language makes
6 the section useless to CLECs. Furthermore, disputes must be resolved by the
7 Commission, which imposes additional cost and delay on the CLECs.

8 **Q. WHY DO YOU SAY THE CONDITIONS TO COMPLY WITH SECTION**
9 **252(i) AND ASSUME RELATED TERMS IS THE AGREEMENT**
10 **RENDER THE SECTION USELESS?**

11 A. The "related terms" condition renders opt-in useless because the agreements were
12 structured in a manner to prevent the other CLECs from being able to opt-in.
13 Eschelon's representative testified in a deposition that Qwest wanted a "unique
14 arrangement" so other carriers could not opt-in. AT&T' Section 252(e) Initial
15 Brief at 12-13. Because of this, the Commission should not impose "related"
16 terms on the CLECs. If Qwest wants to challenge the applicability of a particular
17 provision to a particular CLEC then the burden should be on it to object and
18 obtain relief from the Commission. The burden should not be on CLECs.

1 **G. WHOLESALE RATE IMPLEMENTATION**

2 **Q. BRIEFLY DESCRIBE THE WHOLESALE RATE IMPLEMENTATION**
3 **SECTION**

4 A. The wholesale rate implementation section states that Qwest shall implement
5 wholesale rate changes within 60 calendar days from the effective date of a final
6 Commission decision approving rates and identifying the specific rates to be
7 implemented.

8 **Q. DO YOU HAVE ANY CONCERNS WITH THIS SECTION?**

9 A. Yes. The time period for wholesale rate changes should be 30 calendar days as
10 initially recommended by Staff. This would create parity between retail and
11 wholesale rate changes.

12 At the end of the Show Cause case, Staff recommended that Qwest have 30 days
13 to implement wholesale rate changes. Staff Closing Brief at 10. Staff now
14 provides no explanation why 30 days is no longer sufficient. If Qwest is unable to
15 make the necessary changes in ³⁰~~60~~ days in a particular case, Qwest should have the
16 opportunity to prove that and get a waiver, but there has been no evidence
17 presented that justifies 60 days in all cases or any disparity between retail and
18 wholesale implementation.

1 **H. DISMISSAL OF LITIGATION**

2 **Q. BRIEFLY DESCRIBE THE DISMISSAL OF LITIGATION SECTION**

3 A. Basically, this section provides that the Section 252(e) proceeding, the Section
4 271 sub-docket and the Show Cause proceeding shall be terminated if the
5 Settlement Agreement is approved. The Settlement Agreement "shall constitute
6 full and final resolution of the Litigation, and the Decision shall include an order
7 terminating and closing" the 2 cases and the Section 271 sub-docket.

8 **Q. WHAT CONCERNS DO YOU HAVE WITH THIS SECTION?**

9 A. None of the other parties to these cases, other than Staff and Qwest, signed on to
10 the Settlement Agreement. Yet Qwest and Staff have agreed to terms that will
11 extinguish all the CLECs' and other parties' claims and issues. This is
12 extraordinary. Generally, if all parties do not sign on a settlement, the remaining
13 parties can continue to litigate their claims. Not only were the CLECs denied the
14 opportunity to participate in negotiating on the substantive terms of the
15 settlement, the final agreement precludes them from raising their issues if they
16 disagree with what Staff has negotiated. If the Settlement Agreement is approved,
17 then non-settling parties should remain free to litigate their claims even if the
18 underlying dockets are closed.

1 **I. COMPROMISE**

2 **Q. BRIEFLY DESCRIBE THE SECTION ON COMPROMISE.**

3 A. This section contains two concepts: the parties wish to settle the case “in a manner
4 consistent with the public interest and based upon pre-filed testimony and
5 evidentiary record developed in the Litigation []”.

6 **Q. WHAT, IF ANY, CONCERN DO YOU HAVE WITH THE SECTION?**

7 A. The provision is internally inconsistent. On the one hand, the agreement says it is
8 consistent with public interest and based on the evidence. On the other hand, it
9 says none of the provisions may be cited or relied on as precedent. Essentially,
10 Staff and Qwest are claiming the Agreement is legally supportable but do not
11 want to be held to the terms publicly. Staff and Qwest are trying to have it both
12 ways. As I have testified, the Settlement Agreement is not supported by the
13 evidence, bears little relation to Qwest’s illegal actions and should be rejected in
14 favor of an Order that more closely reflects Staff’s previously filed positions.

15 **J. RELEASE OF ALL CLAIMS**

16 **Q. YOU INDICATE YOU REVIEWED THE RELEASE OF ALL CLAIMS**
17 **REFERRED TO IN THE SETTLEMENT AGREEMENT, CORRECT?**

18 A. Yes, although it was not attached to the Joint Filing, AT&T received a copy from
19 Qwest, and its attorney indicated to AT&T the copy AT&T had was the final
20 release.

1 **Q. DO YOU HAVE ANY CONCERNS WITH THE RELEASE OF ALL**
2 **CLAIMS?**

3 A. The terms of the Release state that the party executing the Release releases any
4 and all claims of whatever nature, including violation of State and federal statutes,
5 tariffs, rules or regulations. As I testified earlier, McLeod and Eschelon received
6 discounts on all services, Section 251(b) and (c) services, intrastate tariff services
7 and interstate tariff services. However, the discount credits section of the
8 Agreement only provides a discount on Section 251(b) and (c) services. CLECs
9 must waive their intrastate tariff and interstate tariff preference and discrimination
10 claims to obtain even the limited discounts offered on the Section 251(b) and (c)
11 services. Although Qwest has argued the Commission has no jurisdiction over
12 the 10% discount provided to McLeod and Eschelon on the interstate services, it
13 has no qualms of using the Commission's authority to obtain an order to release
14 those very same claims. I don't fault Qwest for trying, but the Commission
15 should not approve such an overbroad release.

16 **Q. HAVE YOU REVIEWED STAFF'S ORIGINAL RECOMMENDATIONS**
17 **IN THE CASES?**

18 A. Yes.

1 **Q. CAN YOU SUMMARIZE STAFF'S ORIGINAL RECOMMENDATION?**

2 A. Yes. I will limit my summary to the monetary provisions.⁷ Staff proposed the
3 following remedies:

4 1. Penalties totaling \$22,651,000. Kalleberg Direct at 95; Rowell Direct at
5 14 & 16; Staff Sub-docket Section 271 Report, ¶6.

6 2. Cash payment eligible to CLECs totaling 10% of purchases of
7 Section 251(b) and (c) and intrastate services for the period January 1,
8 2001 through June 30, 2002. Kalleberg Direct at 90.

9 3. 10% Cash Discount on all Section 251(b) and (c) services and intrastate
10 services prospectively for 18 months from date of order. *Id* at 91.

11 Three significant compromises are plainly apparent when this is compared with
12 the terms of the Settlement Agreement. First, Staff agreed to eliminate the
13 discount on all intrastate services and confine it only to Section 251(b) and (c).

14 By Qwest's estimate this eliminates \$6 Million from the discount credits that
15 would have been available to the CLEC's under Staff's initial recommendation.

16 Second, Staff agreed to eliminate all prospective discounts, even on section
17 251(b) and (c) services. Third, Staff agreed to reduce the penalties by
18 \$17.5 Million. Instead, Staff agreed to accept and credit Qwest for \$6 Million in

⁷ Of course, since Staff's initial recommendation did not contemplate a settlement, many of the concerns raised here were not addressed by Staff at that time.

1 voluntary contributions. Thus, in exchange for \$6 Million in “voluntary
2 contributions”, the State of Arizona was shorted \$17 Million, the CLECs’ credits
3 were reduced by \$6 Million and prospective discounts to CLECs that could
4 reasonably be valued at \$12 to \$14 Million were also eliminated.⁸

5 Qwest, on the other hand, will pay a substantially reduced penalty, significantly
6 reduced credits to CLECs, no prospective discounts and it has also converted at
7 least \$6 Million of that amount to soft money in the form of “voluntary
8 contributions”.⁹

9 **III. STAFF’S DIRECT TESTIMONY**

10 **Q. HAVE YOU READ STAFF’S DIRECT TESTIMONIES?**

11 **A.** Yes.

12 **Q. DO YOU HAVE ANY COMMENTS REARDING STAFF’S**
13 **NEGOTIATION GOALS EXPRESSED BY MR.JOHNSON?**

14 **A.** Yes. Mr. Johnson states that “[i]t was Staff’s goal that the conduct at issue in the
15 Litigation not be repeated and that a reasonably sufficient deterrent be
16 established.” Johnson Direct at 6. What is missing from Staff’s goals and Mr.
17 Johnson’s entire testimony is any mention of remedying the harm to the CLECs

⁸ This valuation is based on the valuation attached by Qwest to the credits for all intrastate services for an 18 month retroactive period of time. Obviously, the value of the prospective discounts could be greater or less.

⁹ As I discussed, under the Settlement Agreement the voluntary contributions portion could actually exceed \$6 Million.

1 and competition. I acknowledge that Mr. Johnson testifies that Sections 3, 4 and
2 5 are designed to benefit competitors, but there is no explicit acknowledgement
3 by Mr. Johnson of the harm to competition and CLECs nor correlatively, that the
4 need to remedy that harm are primary goals of the Settlement Agreement. By
5 contrast, Staff witness Kalleberg had earlier made it quite clear that “[t]he focus
6 of this docket is on competition, rather than on infrastructure.” Kalleberg Direct
7 at 95. The Staff witness did not at that time address the concept of “voluntary
8 contributions,” but charitable contributions and educational programs miss the
9 mark just as badly as infrastructure investments. Qwest tried a similar approach
10 in Minnesota, where it was unanimously rejected.

11 **Q. MR. JOHNSON STATES THAT AN AGREED UNPON SOLUTION**
12 **WOULD APPEAR BENEFICIAL BECAUSE LITIGATION HAS RISKS.**
13 **DO YOU AGREE WITH MR. JOHNSON?**

14 A. Certainly litigation has risks. I would agree that in litigation “the outcome is
15 ultimately determined by someone else.” Johnson Direct at 3. And I would also
16 agree that there are times that the parties to the litigation may prefer to have
17 certainty instead of uncertainty. But certainty does not mean abandoning
18 positions or obtaining certainty at the expense of other parties and without regard
19 to the basis of the underlying claims or action.

20 I also see little uncertainty regarding Staff’s case. The evidence supports Staff’s
21 initial recommendations and the mere fact that Qwest is unwilling to pay a
22 meaningful penalty or reasonable competition restitution is patently insufficient.

1 In short, I see nothing which warrants Staff retreating so substantially from those
2 recommendations.

3 As for someone else deciding the outcome of the litigation, that is how the
4 process works. It is the Staff's responsibility to review and recommend solutions,
5 the administrative law judge's job is to write a recommended decision and the
6 Commission role is to evaluate that recommended decision. If the Commission
7 approves the Agreement, the case is over. None of the wrongdoing of Qwest will
8 be reflected in a final order. There will be no findings or conclusions regarding
9 Qwest's improper and unlawful behavior. There will only be an order approving
10 the settlement.¹⁰

11 **Q. DO YOU BELIEVE THE COMMISSION SHOULD MAKE FINDING AND**
12 **CONCLUSIONS REGARDING QWEST'S BEHAVIOR?**

13 A. Absolutely. The recitals in the Agreement do not replace findings and
14 conclusions that document Qwest' past behavior. Without findings and
15 conclusions, Qwest will undoubtedly argue that its past actions were simply
16 allegations and that there was no admission of wrongdoing. While no company
17 wants findings and conclusions that it violated Commission rules, that its conduct
18 was willful and intentional, that management made conscious decisions to make
19 rate changes in other states before it made then in Arizona or that it discriminated

¹⁰ In Minnesota, the Commission first adopted the ALJ's recommended decision on liability, with findings and conclusions, and then conducted a separate penalty phase.

I am not suggesting that Staff can never settle a case. But in this case, for all the reasons recited above, it would be better to reject the Settlement Agreement as proposed and resolve the cases on the merits based on the evidentiary record. At the very least, the Administrative Law Judge and Commission should review the record of all three cases before they make their decision whether to accept or reject the Settlement Agreement, not simply the testimony regarding the Agreement.

Q. QWEST WITNESS ZIEGLER ARGUES QWEST “WILL HAVE COMPROMISED SUBSTANTIAL RIGHTS AND DEFENSES” IT HAS ASSERTED IN THE SECTION 252(e) PROCEEDING BY GIVING THE CLECS THE DISCOUNT CREDITS. DO YOU AGREE?

First, as Eschelon testified, Qwest was manipulating the contract process so CLECs could not opt-in. Therefore, the contracts should be strictly construed in CLECs' favor and against Qwest for opt-in purposes. Second, both Eschelon and McLeod received 10% discount on widely disparate obligations. Eschelon was

1 only required to buy \$15,000,000 of Qwest's services. Joint Exhibit 1, No. 5, § 2.
2 Except for Eschelon's obligation to provide consulting services, all the other
3 obligations in the Agreement are Qwest's. McLeod was required to buy
4 substantially more services thanⁿ Eschelon. The Commission could find, as
5 Minnesota did, that these provisions were a sham and that the 10% discount was
6 unrelated to the obligation to buy a minimum amount of services or the consulting
7 services. Or the Commission could find that the 10% discount was paid to silence
8 its critics and keep damaging information out of state 271 proceedings. Both
9 findings are supported by the evidence and either finding would allow a CLEC to
10 opt-in to the agreement and obtain the discount quite easily. In no case should
11 Qwest be able to hide behind the artifice it created to prevent other CLECs from
12 obtaining the discounts.

13 **Q. MR. ZIEGLER STATES THAT CLECS HAVE NO OPT-IN RIGHTS TO**
14 **NON-SECTION 251 SERVICES. DO YOU AGREE WITH MR.**
15 **ZIEGLER?**

16 **A.** No. Mr. Ziegler ignores the Commission's authority to remedy discrimination.
17 Qwest was providing the 10% discount of all services to McLeod and Eschelon,
18 including interstate. Excluding interstate services by itself reduces Qwest's
19 exposure substantially and while the remedy cannot therefore be made perfectly

1 precise in terms of remedying the totality of the discrimination, that is not a
2 reason to narrowly construe opt-in rights to Qwest's benefit.¹¹

3 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION?**

4 **A.** The Commission should reject the Settlement Agreement and instruct the
5 Administrative Law Judge to draft recommended decisions in these dockets based
6 on the existing record. In other words, permit the cases to be decided on the
7 merits without reference to the Settlement Agreement. Alternatively, the
8 Commission should address the inadequacies in the Settlement Agreement raised
9 by the CLECs and provide Qwest and Staff the option to amend the Agreement to
10 address the Commission's concerns and resubmit it for approval. In either event,
11 the Commission should also make explicit findings regarding Qwest's past
12 behavior. Under no circumstances should "voluntary contributions" take the
13 place of or be permitted as offsets to the monetary penalties or competitive
14 restitution.

15 The Commission should be concerned that not a single CLEC would sign the
16 Settlement Agreement. The penalty is insufficient to change Qwest's behavior
17 and the competitive restitution provisions fall far short of remedying Qwest
18 discriminatory actions. Furthermore, the additional non-monetary terms are
19 unacceptable, unnecessary and utterly unconnected to the underlying offenses.

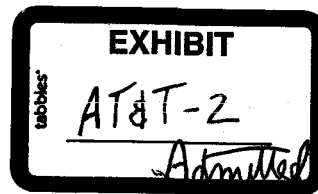
¹¹ Likewise, the discounts to McLeod and Eschelon also applied to all intrastate services in several other states.

1 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

2 A. Yes.

4041 North Central Avenue
11th Floor
Phoenix, Arizona 85012
Office 602-630-8255
Fax 602-235-3107

Monica Luckritz
Manager - Policy and Law



September 11, 2003

Richard S. Wolters
AT&T
1875 Lawrence Street, Suite 1503
Denver, CO 80202

Dear Mr. Wolters:

Re: Qwest Corporation
Docket No. T-00000F-02-0271

Pursuant to a Procedural Order, dated 9/4/03, granting AT&T's motion to compel, enclosed is Qwest's supplemental response to ATT/TCG 05-001S1.

If you have questions, please contact me.

Very truly yours,

Monica Luckritz
(20)

Enclosures

Arizona
RT-00000F-02-0271
ATT/TCG 05-001S1

INTERVENOR: AT&T Communications of the Mountain States, Inc. and TCG
Phoenix

REQUEST NO: 001S1

In the Settlement Agreement a minimum of \$8,100,000 and a maximum of \$8,900,000 is allocated to the discount credits for Eligible CLECs for Section 251(b) and (c) services.

a. Disregarding the maximum allocation provided for in the Settlement Agreement, provided for in the Settlement Agreement, provide the maximum amount Qwest would have to pay in discount credits to all Eligible CLECs for the period of January 1, 2001, through June 30, 2002, if Section 3 Discount Credits includes only Section 251 (b) and (c) services.

b. Disregarding the maximum allocation provided for in the Settlement Agreement, provide the maximum amount Qwest would have to pay in discount credits to all Eligible CLECs for the period of January 1, 2001, through June 30, 2002, if Section 3 Discount Credits includes Section 251(b) and (c) services and all intrastate services purchased by Eligible CLECs.

c. Disregarding the maximum allocation provided for in the Settlement Agreement, provide the maximum amount Qwest would have to pay in discount credits to all Eligible CLECs for the period of January 1, 2001, through June 30, 2002, if Section 3 Discount Credits includes Section 251(b) and (c) services and all intrastate services and all interstate services purchased by Eligible CLECs.

RESPONSE:

1.a If Section 3 Discount Credits include only Section 251 (b) and (c) services, Qwest estimates the payment to eligible CLECs to be between \$6M and \$8M.

1.b If Section 3 Discount Credits include only Section 251 (b) and (c) services and all Intrastate services, Qwest estimates the payment to eligible CLECs to be between \$12M and \$14M.

1.c Qwest objects on the grounds that this request is not reasonably calculated to lead to discovery of admissible evidence because the requested information pertains to services outside the jurisdictional scope of the Arizona Corporation Commission.

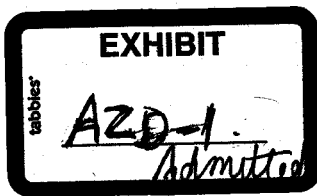
Qwest is continuing its efforts to refine these figures further.

Respondent: Arturo Ibarra

SUPPLEMENTAL RESPONSE DATED 09/10/03:

1.c If Section 3 Discount Credits include Section 251(b) and (c) services, and all intrastate services and all interstate services, Qwest estimates the payment to be between \$28.5M and \$30.5M.

Respondent: Arturo Ibarra and Legal



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September 10, 2003

BY HAND DELIVERY

Martin A. Aronson
Morrill & Aronson, P.L.C.
One East Camelback Road, Suite 340
Phoenix, Arizona 85012-1648

Re: Arizona Dialtone supplemental information request
File No. 67817.295

Dear Marty:

In response to your inquiry, Qwest has calculated the following credits potentially available to Arizona Dialtone under the Global Settlement Agreement, subject to the caveats stated below:

Discount Credits:	\$241,189	Resale service purchases
(Paragraph 3)	77,600	UNE-P purchases
	<u>215</u>	Miscellaneous purchases
	\$319,004	
 Access Line Credits	 \$ 10,192	
(Paragraph 4)		
 UNE-P Credits	 <u>\$ 15,785</u>	
(Paragraph 5)		
 Total Credits	 \$344,981	

The Access Line Credits do not account for potential offsets calculated by the amount of Arizona Dialtone's collections from Qwest for termination of intraLATA traffic, and thus the actual amounts due could be less. The UNE-P credits were calculated using as a proxy the amounts per UNE-P lines paid by Qwest to Eschelon; therefore, the actual amount could be different.

FENNEMORE CRAIG

Martin A. Aronson
September 10, 2003
Page 2

These credit amounts have been calculated based on purchases during the period covered by the Settlement Agreement, without considering whether Arizona Dialtone otherwise meets the eligibility requirements set forth in the Settlement Agreement for each type of credit, such as certification as a CLEC for the periods set forth in the Settlement Agreement. We believe that Arizona Dialtone's certification is a matter for the Commission and the Staff; Qwest does not have the authority to determine a CLEC's date of certification with the Commission.

Should you have any questions, please do not hesitate to call.

Very truly yours,

FENNEMORE CRAIG



Timothy Berg

TB/jmw

PHX/1459465

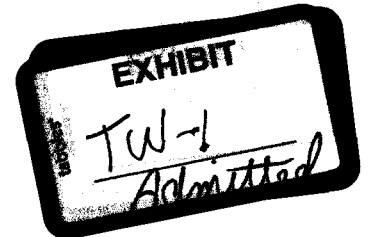
BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
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MARC SPITZER
Chairman
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Commissioner
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Commissioner
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Commissioner



IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF
1996

DOCKET NO. T-00000A-97-0238

IN THE MATTER OF QWEST
CORPORATION'S COMPLIANCE
WITH SECTION 252(e) OF THE
TELECOMMUNICATIONS ACT OF
1996

DOCKET NO. RT-00000F-02-0271

ARIZONA CORPORATION
COMMISSION
Complainant.

DOCKET NO. T-01051B-02-0871

v.

QWEST CORPORATION
Respondent.

COMMENTS OF TIME WARNER TELECOM

AUGUST 29, 2003

I. Time Warner Telecom

Time Warner Telecom of Arizona LLC ("Time Warner Telecom") is a leading provider of "last-mile" broadband data, voice, dedicated internet access, and dedicated web hosting in the Phoenix and Tucson metropolitan areas. In 2001, Time Warner Telecom entered the Phoenix and Tucson markets by purchasing out of bankruptcy substantially all of the assets of GST Telecommunications Inc. Since that time, Time Warner Telecom has been committed to expanding its Arizona network, offering robust and creative new products, and superior customer care. Time Warner Telecom is one of Qwest's major wholesale customers and will be impacted by the Settlement Agreement proposed by Qwest and Commission Staff.

II. The Settlement Proposal

The settlement proposal generated by Qwest suffers from two serious infirmities. First, the Settlement Agreement (Notice of Filing Settlement Agreement, July 25, 2003, Docket No. T-00000A-97-0238) was outlined, drafted and agreed upon without any material CLEC input. The irony here is extraordinary. Qwest is alleged to have engaged in anti-competitive conduct that harmed CLECs, and yet Qwest and Commission Staff propose to settle the case without any substantial CLEC input or without fully addressing the harm caused to carriers like Time Warner Telecom. The two brief opportunities that a handful of CLECs were given to comment on the Agreement resulted in no substantial change to the Agreement.

The second serious problem with the Settlement Agreement is its failure to remedy the harms identified in the very cases that are the subject of settlement. The CLEC discounts and credits are not as broad as (or better than) the discounts and credits secured by Eschelon and McLeod by way of their secret agreements. In other words, this Agreement does not restore

CLECs to a level playing field with Qwest, Eschelon and McLeod. In spite of this failing, Qwest is allowed under the Settlement Agreement to direct the vast majority of the settlement penalty toward improving the value of the Qwest brand by building new facilities and promoting the general public welfare (in Qwest's name). This is akin to allowing a gas wholesaler to settle an antitrust price fixing suit by underwriting a clean air campaign. Although it is good to reduce air pollution, those harmed by the wholesaler's anti-competitive conduct should be made whole before resources are directed to general public concerns. By the same token, CLECs should be made whole before Qwest is permitted to expend penalty dollars on causes that promote its own business interests.

Given these two failings, Time Warner Telecom asks that the Commission reject this Settlement Agreement and direct the Commission Staff and Qwest to sit down and negotiate a new Settlement Agreement, or at least a framework for a new Agreement. The new agreement should benefit the victims of Qwest's anti-competitive conduct -- the CLECs. The current proposal serves the interests of the wrongdoer rather than its victims, and thus it is no coincidence that it does not have a single CLEC supporter.

III. Proposed Revisions

If the Commission instead decides to go forward with this settlement, Time Warner Telecom asks that the following four changes to the Agreement be implemented:

A. The Agreement Should Not Limit the 10% Discount to 251(b) & (c) Services

The Proposed Settlement provides for a 10% discount credit only on Section 251(b) and (c) services. This was not the discount given Eschelon and McLeod ("favored CLECs") under the secret agreements, and should not be the discount now offered to disfavored CLECs.

Eschelon and McLeod received a 10% discount on *all purchases* from Qwest, including intrastate services, interstate switched access, special access, and private line. Time Warner Telecom submits that the Settlement Agreement should require Qwest to give all disfavored CLECs a 10% discount for all services purchased between January 1, 2001 and June 30, 2002 ("Discount Period").

B. Purchased Receivables

In January 2001, Time Warner Telecom purchased substantially all of GST Telecommunications assets, including all claims, receivables, and general intangibles. CLEC restructurings were common in 2001, and a number of companies filed for bankruptcy, dissolved, merged, or reorganized during the Discount Period. For the benefit of all CLECs involved in such restructurings, Time Warner Telecom requests that the Settlement Agreement, or the Commission Order approving the Agreement, expressly provides that payment shall be made by Qwest under the Agreement to any documented successor or assign in interest of a former CLEC without any further proceedings. The following language could be used to achieve this result:

Discount Credits, Access Line Credits, and UNE-P Line Credits payable to a CLEC that has since been the subject of a bankruptcy, dissolution, restructuring or merger ("Absent CLEC"), shall be made to the documented successor or assign of the claim without additional proceedings or delay.

C. Payment of Discount Credits

CLECs should receive interest, at the statutory rate, for credits or discounts received under the Settlement Agreement. Qwest unlawfully collected funds from disfavored CLECs during the Discount Period. In holding this money for more than two years, Qwest has further damaged CLEC interests. Time Warner Telecom also requests that the Commission require Qwest to pay the entire cash value of the discounts or credits in cash or wire transfer within 30

days of approval of the Settlement Agreement. Time Warner Telecom strongly opposes any arrangement whereby Qwest waits six months (180 days) following approval of the Agreement and then credits CLEC against future debt (rather than paying outright) money owed under the Settlement Agreement. Once the payment is made, CLEC parties should be entitled under the Agreement to seek correction of the amount paid if CLEC records indicate that the discount or credit was incorrectly calculated by Qwest.

D. Release

The Release proposed by Qwest is inappropriate. (See attached Exhibit A.) CLECs already tolerate anti-competitive conduct by Qwest in Arizona that goes unreported. Given this environment, Qwest should not be authorized to extract through this Settlement full releases from all CLECs for all conduct that may relate to prices charged by Qwest, interconnection agreement filing obligations, or Qwest's 271 application. Any release proposed should instead be limited to the specific remedy authorized under the Agreement. A broad release, such as the one proposed by Qwest, would either (a) shrink the number of CLECs requesting the discounts and credits (creating an advantage for Qwest) or (b) eliminate legitimate claims CLECs have against Qwest (also an advantage for Qwest).

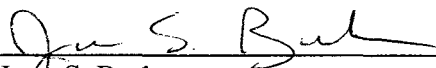
Conclusion

Time Warner Telecom opposes the Settlement Agreement proposed by Staff and Qwest, which was generated without substantial CLEC participation. Time Warner Telecom recommends that the Commission direct Staff and Qwest to sit down with all interested parties and negotiate a new settlement that advances all parties' interests. If Qwest is unwilling to enter

into such negotiations, the Commission should proceed to resolve each of the three cases based on the evidence and with the full participation of all parties.

Submitted this 29th day of August, 2003.

OSBORN MALEDON, P.A.

By 
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Attorneys for Time Warner Telecom

441556

CERTIFICATE OF SERVICE

I certify that the original and 17 copies of COMMENTS OF TIME WARNER TELECOM regarding Docket Nos. T-00000A-97-0238, RT-00000F-02-0271, and T-01051B-02-0871 were hand delivered this 29TH day of August, 2003, to:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, Arizona 85007

and that a copy of the foregoing was mailed this 29TH day of August, 2003, to the following:

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Brenda Wendt

EXHIBIT A

RELEASE OF ALL CLAIMS

KNOW ALL PERSON BY THESE PRESENTS:

WHEREAS, on or about **DATE**, 2003, The Arizona Corporation Commission ("Commission") approved a settlement agreement between Qwest Corporation ("Qwest") and the Arizona Corporation Commission Staff ("Staff") (collectively, "the Parties") with respect to currently pending before the Arizona Corporation Commission ("Commission"), specifically Docket No. RT-00000F-02-0271 (the "252(e) Unified Agreements; Docket No. T-00000A-97-0238 (the "271 Subdocket"); and Docket No. T-0151B-02-0871 (the "Order to Show Cause" or "OSC"). These dockets shall be collectively referred to in this Agreement as the "Litigation."

WHEREAS, as part of the Agreement, certain competitive local exchange carriers certificated by the Commission to provide local exchange services in Arizona, who purchased interconnection services or unbundled network elements under Section 251(b) or (c) of the Act from Qwest may be entitled to receive Discount Credit, Access Line Credit or UNE-P Credit under the terms of this Agreement.

WHEREAS, **NAME OF CLEC** desires to adopt the Agreement and receive the benefits contained therein, including execution of this Release of All Claims, as referenced in Paragraph __ of the Agreement

1. In consideration for the payment of Discount Credits, Access Line Credits and/or UNE-P Credit under the Agreement, the receipt and sufficiency of which are hereby acknowledged, **NAME OF CLEC** releases any and all claims, causes of action, rights, liabilities, complaints before or to a regulatory or governmental body, suits, and obligations of every nature, kind or description whatsoever regardless of what legal theory based, and regardless of whether grounded in common law, statute, administrative rule or regulation, tariff, contract, tort, equity or otherwise, including, but not limited to, claims or causes of action for fraud, misrepresentation, discrimination, violation of any law of the State of Arizona, violation of any tariff, breach of contract, the violation of federal statutes, rules or regulations, which **NAME OF CLEC** had, has, may hereafter have, or which any other person had, has, or may hereafter have through **NAME OF CLEC** based in whole or in part upon any act or omission of Qwest that is the subject of the Litigation including but not limited to Qwest's failure to file agreements with the Commission for review pursuant to Section 252 of the Telecommunications Act of 1996.

2. This Release of All Claims reflects a fully binding and complete settlement between Qwest and any CLEC pertaining to the Litigation referenced above.

3. This Release of All Claims shall be construed, interpreted, and enforced in accordance with the laws of the State of Arizona.

4. In the event that any Party commences any action or proceeding against another Party or Parties to this Agreement by reason of any breach or claimed breach of any provision, covenant or representation of this Agreement, or commences any action or proceeding in any way connected with this Agreement, or seeks a judicial declaration of rights hereunder, the Party prevailing in such action or proceeding shall be entitled to recover from the other Party the prevailing Party's reasonable attorneys' fees, costs, and any costs of collection, including reasonable attorneys' fees.

5. This Release of All Claims represents the Parties' mutual desire to compromise and settle all disputed claims at issue in the Litigation in a manner consistent with the public interest and based upon the pre-filed testimony and exhibits and the evidentiary record developed in the Litigation. This Release of All Claims represents a compromise of the positions of the Parties. Acceptance of this Release of All Claims is without prejudice to any position taken by any party in the Litigation and none of the provisions may be referred to, cited or relied upon by any other party in any fashion as precedent or otherwise in any proceeding before this Commission or any other regulatory agency or before any court of law for any purpose except in furtherance of the purposes and results of this Release of All Claims.

6. The provisions of this Release of All Claims may not be waived, altered, or amended, in whole or in part, without the written consent of the Parties.

7. The terms of this Release of All Claims are contractual and not mere recitals, and no representations have been made which are not contained herein.

8. This Release of All Claims constitutes the full and complete understanding of the Parties and supersedes any prior understandings or agreements, whether oral or in writing.

9. In the event that any term, covenant, or provision of this Release of All Claims shall be held by a court of competent jurisdiction or any regulatory or governmental body including the Commission to be invalid or against public policy, the remaining provisions of this Release of All Claims shall remain in full force and effect.

10. The Parties hereby represent to each other that they have reviewed and understand this Release of All Claims, and that no party shall deny the validity of this Release of All Claims on the grounds that they did not understand the nature and consequences of this Release of All Claims or did not have the advice of counsel. This Release of All Claims is the result of negotiations between the Parties, each of which has participated in the drafting of this Release of All Claims.

11. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.